BOSTON PUBLIC LIBRARY
3 9999 06317 518 4

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

N. R. A. RECORDS SECTION
DEPARTMENT OF COMMERCE

THE NRA CODE LABEL

By
A. Herbert Barenboim

WORK MATERIALS NO. 84

March, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

THE NRA CODE LABEL

By

A. Herbert Barenboim

9859

TABLE OF CONTENTS

		Page
SUMMARY		1
CHAPTER I	INTRODUCTION	3
CHAPTER II	ORIGIN OF THE CODE LABEL	6
	1. Conflicting Jurisdiction Over use of Blue Eagle Insignia on Code Labels	8
	2. Industries Adopting Label Provisions	10
	3. Industries Not Adapted to the Use of Labels and Desiring the Use Thereof	14
	4. The Prison Labor Compact Insignia	15
	5. Sheltered Workshop Insignia	15
CHAPTER III	EFFECT ON CODE ENFORCEMENT	17
	1. Consumer Demand for Products Bearing Labels	17
	2. Registration Numbers	18
	3. Suspension of the Issuance of Labels	19
	4. The Label Agency	21
	5. Comparison of Compliance Between a Label Using and a Non-Label Using Industry	26
CHAPTER IV	LABELS AS A MEANS OF RAISING REVENUE	29
	1. Assessment Problems	31
	2. Administrative Problems	33
	3. Effect of Label Costs on Consumer	35
CHAPTER V	CODE AUTHORITY ADMINISTRATION OF LABEL PROVISIONS	36
	1. Method Used in Purchasing Labels	36

Page

2. Storage of Labels..... 36

3. Use of Compliance Certificates..... 36

4. Inspections and Examinations of Plants..... 37

CHAPTER VI LEGALITY OF CODE LABELS..... 38

1. The Powers Conferred on the President by NIRA..... 38

2. Legality of the Charge for Labels..... 43

3. The Right to Suspend the Issuance of Labels..... 45

4. The Validity of the Label Provisions in the Retail Code..... 46

5. The First Label Case..... 47

CHAPTER VII A COMPARISON OF THE UNION LABEL TO THE N. R. A. LABEL..... 49

CHAPTER VIII CONCLUSIONS..... 54

1. Desirability of One Insignia..... 54

2. Desirability of More General Use of Labels..... 54

3. Adaptability of Label to General Use..... 54

4. Desirability of Label Distribution By Industry or By Government..... 55

5. Bases of Assessment..... 56

APPENDIX

Appendices marked * are not here reproduced. They are in NRA files under the caption "NRA Studies Special Exhibits - Work Materials No. 84.

Page

A. Copy of Certificate of Assignment of "design letters patent No. 90793½"(The Blue Eagle) from Charles T. Coiner to the Government of the United States..... 57

B. Insignia section release "Blue Eagle Reproduction requirements."..... 58

C. Copies of code labels..... 59

*D. Administration Letter to Code Authorities Dated March 12, 1935, Explaining Application of Administrative Order X135.

Copies of Rules and Regulations for the Use and Distribution of Labels Adopted by the Code Authorities for:

*E. The Garter, Suspender and Belt Manufacturing Industry.

*F. The Corset and Brassiere Industry.

*G The Fur Manufacturing Industry.

*H. The Knitted Outerwear Industry.

*I. The Ladies Handbag Industry.

*J. The Novelty Curtains, Draperies, Bedspreads and Novelty Pillows Industry.

*K. The Pleating, Stitching and Bonnaz and Handembroidery Industry.

*L. The Umbrella Industry.

*M. The Artificial Flower and Feather Industry.

N. Form used by label agency to order suspension of use of labels..... 60

O. Form used by label agency to deny the right to suspend issuance of labels..... 61

P. Form used by label agency in ordering code authorities to resume issuance of labels..... 62

Copies of Applications and Certificates of Compliance adopted by the Code Authorities for:

Page

*Q. The Garter, Suspender and Belt Manufacturing Industry.

*R. The Umbrella Manufacturing Industry.

The Ladies Handbag Industry.

*S. For Contractors

*T. For Manufacturers

*U. The Knitted Outerwear Industry.

*V. The Infants and Childrens Wear Industry.

*W. The Fur Dressing and Fur Dyeing Industry.

*X. The Cotton Garment Industry.

**Y. The Blouse and Skirt Industry.

Copies of Forms used for Listing Contractors adopted by the Code Authorities for:

*Z. The Blouse and Skirt Industry.

*AA. The Fur Manufacturing Industry.

*BB. An analysis of contested N.R.A. Cases:

CC. Text of Administrative Order X-135..... 63

SUMMARY

The use of labels to signify the quality or standards of a given product, or its method of manufacture, have been known to the American public since 1870. From the date of the use of the first label to signify working conditions in industry, down to the period of the adoption of the first label provision in the code of fair competition in the coat and suit industry, the American public had been educated to recognize the importance of such labeling of products in the process of raising standards of living.

The provision in the code of fair competition for the coat and suit industry, making the use of labels mandatory, was in the first instance solely for the purpose of so identifying the product made, that the consuming public might be able to choose between products made under fair competitive standards and those made under standards not in accordance with code provisions. The use of the label as a means of effecting code compliance was first suggested by Professor W. F. Ogburn who on July 20, 1933, at the public hearing of the code fair competition of the coat and suit industry stated that, "the fact that a product is found without this label shall be considered prima facie evidence of its manufacture and sale contrary to the provisions of this code."

The use of code labels as a means of raising revenue resulted from a suggestion by Mr. K. A. Blaustein to the effect that the persons who were chosen to administer the label provisions of codes should receive their salary from monies raised from the sales of such labels and not from trade associations or other outside interests which might as a result of such payments of salary exercise a degree of control over the actions of such code officials.

The use of code labels was chiefly used in the apparel and other needle works industries. A more general use of labels, though desirable, was not accomplished chiefly as a result of the inability to fully develop administrative procedure and policy to effectuate the different types of labels which would have been necessary. Enforcement of code provisions was facilitated and materially aided through the use of labels. Much of the effectiveness of fair competition for the "retail trade" which prohibited members of the trade from purchasing, or selling products of industries made under codes requiring the use of labels unless the products had affixed thereto such labels.

The administration of code label provisions by the National Recovery Administration was greatly hampered by the fact that the use of labels had not been contemplated and it was necessary to develop new policy as each new problem arose. The establishment of a label agency and the appointment of a label agent to act immediately upon label suspension cases had the effect of correcting (to a marked degree) possible abuse under any label system. Thus approximately nine months before the Supreme Court decision in the Schecter case the administration had created a procedure which tended to eliminate all possible abuse of label regulations by code authorities, and afforded members of industries manufacturing products under provisions of codes containing label provisions, immediate relief and the right of appeal.

Raising of revenue in industries operating under codes containing label provisions was from 27 to 42% more effective than in industries operating under codes not containing label provisions.

An analysis of hundreds of court decisions, pertaining to cases involving the right of an executive to establish "rules and regulations" and to provide for a "license" to carry out the provisions of an act of legislature, and the right of the executive to provide for the withdrawal or suspension of such "license" for the violation of the rules and regulations established, indicate definitely that (the act of legislation being legal) the adoption of code labels, and suspension of use for non-compliance and the raising of revenue through sales was legal.

THE NRA CODE LABEL *

CHAPTER I

INTRODUCTION

In accordance with the provisions of the National Industrial Recovery Act the National Recovery Administration was created to receive proposed codes of fair competition and to hold public hearings thereon. During the first month of operation there were delays in code submission and the reaching of agreement upon drafts submitted which prevented immediate reemployment on the broad scale desired by all concerned. The decision of the President to initiate a plan for the more rapid negotiation of agreements in addition to codes of fair competition resulted in the President's Reemployment program, outlined in NRA Bulletin #3** of December 20, 1933. This bulletin contained a description*** of the purpose of the NRA insignia. A few days earlier the Administration's idea of an employer's badge of cooperation had already taken the form of the now familiar design, the "Blue Eagle", submitted by Charles T. Coiner**** which was chosen from numerous drawings submitted.

The President in his radio address of July 24, 1933 said:

> "In war, in the gloom of night attacks, soldiers wore a bright badge on their shoulders to be sure that comrades did not fire on comrades. On that principle, those who cooperate in this program must know each other at a glance. That is why we have provided a badge for this purpose. A small design with the insignia 'we do our part', and I ask that all who join with me shall display that badge prominently. It is essential to our purpose."

The "badge" referred to was the "Blue Eagle". Every one was asked to join in displaying this insignia to indicate cooperation with this gigantic effort to overcome the downward economic trend. General Hugh S. Johnson, then Administrator of the National Recovery Administration, best describes the purpose of the Blue Eagle as follows:

(*) This report considers only the code label. For a general treatment of the NRA. Insignia consult report by Wm. Duvall on "NRA Insignia" (in the series of work material reports issued by the NRA Division of Review.)

(**) The President's Re-employment Program (Washington: Government Printing Office, 1933.)

(***) Id., pp. 2,3.

(****) See appendix (A) for certification of original patent.

> "The greatest service NRA could do was to restore hope and confidence. Through the Blue Eagle it tried to give people something definite that they could do and hope for, and instead of leaving them helpless under the burden of a great disaster, to show them how they could act together to fight it." (*)

To make it possible for public opinion to support those who were cooperating to create employment and purchasing power, there had to be a symbol easily recognizable, striking and effective. The Blue Eagle was designed for that purpose. The Blue Eagle at the time of its inception stood for united public support and opinion behind the President's Reemployment Agreement. (**) Public response to the PRA Blue Eagle insignia was so widespread that it was felt advisable to continue its use by employers operating under codes of fair competition. The use of the Blue Eagle as PRA or code insignia was optional, its method of use was optional, and there were no charges made for its use.

The Code of Fair Competition for the Coat and Suit Industry was the fifth code approved by the National Recovery Administration. This industry, as early as 1910, recognized the value of affixing some form of insignia to its garments to inform the consumer of the conditions under which they were made. The industry, however, did not actually adopt the use of any label at that early date but efforts along these lines led to the adoption of a garment label by the dress and waist industry in 1913. The latter industry, in adopting the label, issued the following statement:

> "To make more effective the maintenance of sanitary conditions throughout the industry, to insure equality of minimum standards throughout the industry and to guarantee to the public, garments made in shops certificated by the Board of Sanitary Control, the Board agrees that there shall be instituted in the industry a system of certificating garments by a label affixed to the garment."(***)

(*) "The Blue Eagle from Egg to Earth" Doubleday Doran - 1935

(**) "N.R.A. Bulletin #3 pp 2,3. This bulletin and all material of a similar type referred to in the following pages may be found in the N.R.A. archives, unless reference to other sources are made.

(***) From Julius Henry Cohen's "Law and Order in Industry."

In 1913 the Board of Arbitration for the coat and suit industry stated that some method ought to be devised of enlisting the cooperation of the community in the great and difficult task of controlling conditions of employment. It was suggested that a "protocol" label be used as a means of accomplishing such community or consumer cooperation. No action, however, was taken by this industry until 1925 when, as a result of the recommendations of the "Battle Commission", appointed by the Governor of the State of New York, the industry adopted the "pro-sanis" label to certify to the existence in the shops wherein the labelled garments were of certain standard conditions of wages and employment. When the public hearing on the code for the coat and suit industry was held, on July 20, 1933, the leaders of the industry, having experienced the benefits that could be derived through reliance upon community cooperation with fair-dealing members of industry, succeeded in having written into their code a provision for a label similar in type and purpose to the "pro-sanis" label. They believed that such a label would serve to symbolize ethical labor conditions, act as a compliance device, and facilitate the raising of revenue. At the time of this hearing, the Administration had given no consideration to a code label nor to the use of the blue eagle insugnia on such labels.

The purpose of this study is to relate the facts leading to the adoption of code labels, to indicate the effect of such use on industry compliance, code administration, raising of revenue and consumer cooperation.

CHAPTER II

THE ORIGIN OF THE CODE LABEL

The coat and suit industry submitted a proposed code of fair competition to the National Recovery Administration on July 13, 1933. The seventh article of that proposed code contained a clause providing for an NIRA label.(*)

The fact that this proposed label provision had no definite limitations written into it occasioned the filing of several protests, one of which was submitted by Earl A. Blaustein, an attorney, representing the Brooklyn Ladies Garment Manufacturers Association, Inc., an association of approximately 100 coat and suit contractors. The part of his statement which is most relevent follows:

> "Under Article 7th it is proposed that all garments manufactured shall bear an NIRA label with a registration number.
>
> "With this provision we agree, although the past history of the industry warns against the abuses which may result from the method to be employed in the distrubution of such labels. It is not the label itself - the employer should be proud to show his compliance with the purposes of the Recovery Act by the use of this label - but the nature of the control of the issuance of these labels is all important.
>
> "Article 7th designates a committee and Article 8th discloses the means of the three associations to obtain control when it provides that this committee shall consist of two representatives from each of the three associations, together with two representatives of the International Ladies' Garment Workers' Union. Thus the all important governing committee consists of six members representing the framers of this code....."
>
> "A short examination will quickly disclose the ultimate function of a biased committee. Refusal to grant the use of the NIRA label to a non-affiliated producer means his extinction. Recognized members of the three associations are bound to be favored, for the proposed code nowhere provides for the method of financing the salaries of the members of the committee or provides for the cost of its functioning." (**)

(*) To eliminate sub-standard and sweat shop conditions in the Coat and Suit Industry and to assure the manufacture of all garments under proper standards and conditions, it is proposed that all garments manufactured shall bear an 'NIRA' label; such label must be attached to every garment. It shall bear a registration number especially assigned to each member in the industry and remain attached to such garment when placed on sale by the retail distributor. The Committee hereinafter mentioned, together with the Administrator, shall establish the appropriate machinery for the issuance of the label, inspection, examination and supervision of persons engaged in the industry and retailers distributing such garments, and to carry into effect the purpose and intent of this provision and to see to it that it is fully and completely complied with.

(**) Proposed code of fair competition for the coat and suit industry,
9859 Washington, U. S. Government Printing Office, 1933.

Mr. Blaustein suggested a change in the seventh article which, in his opinion, would cure most of its defects. He proposed that NRA labels be sold to the members of the industry at rates to be determined by the code committee. (*) The motive of this proposal was to eliminate the possibility of the code committee owing allegiance to any particular trade association because of the financial support rendered by such association. Mr. Blaustein's proposal was favorably acted upon and provision was made for the compensation for officials of the code authority from revenue to be raised through the sale of labels. Thus we find a code submitted to the administration containing a label provision with the suggestion that such labels be utilized as a means of obtaining revenue.

At the public hearing on the proposed coat and suit code held on July 20, 1933, Professor W. F. Ogburn, representing the Consumers' Advisory Board, suggested that the proposed label provision be changed to provide that "the fact that a product is found without this label shall be considered prima facie evidence of its manufacture and sale contrary to the provisions of this code. (**) Professor W. F. Ogburn's idea was incorporated in the provisions of the approved code. The suggestion was designed to add the third link in the chain of an effective code label. This proposal was calculated to change the permissive character which marked the earlier use of labels in the industry prior to NRA (and even the use of the Blue Eagle under the PRA) to mandatory use. The very fact that a garment was sold without a label would, ipso facto, be a code violation.

In the interim between the time of filing of the protest by Mr. Blaustein and the next public hearing, the parties representing the several factions in the industry had met informally and agreed upon the final form in which article 7 should appear in the Code. This is evidenced from the remarks (***) made by Mr. Blaustein at the public hearing:

> "This Article as it stands is agreed upon. This is the article that speaks about the NIRA label. We agree that the NIRA label, and we say this -- that the NIRA label is to be something more, something in addition to a birth certificate on a garment; we say that the committee, of which I shall hereafter speak, shall be in a position to sell these NIRA labels to all those who subscribe to and are part of the code, for the purpose of raising the funds necessary for the administration of the code so that the committee which will serve this industry shall not only be a paid committee, devoting all of its time and attention to it, but the burden can best be borne in the way of supporting the committee through the utilization of the NIRA label."

The code for the industry, when approved on August 4, 1933, contained

---

(*) See Volume A - proposed code of fair competition for the coat and suit industry.
(**) See Transcript of Public Hearing - Page 287
(***) See Transcript of Hearing - coat and suit industry, Page 462

a label provision in substantially the same form as originally proposed.(*)

It is interesting to note that this industry which was the first to propose a code label, made no provision pertaining to a method of distribution or control of such label other than a general statement that the control should rest with the code authority and the Administrator.

At the time of the adoption of the coat and suit code, the Administration had formulated no policy to cover the distribution and sale of labels, likewise, no provision or policy had been established for the withdrawal or suspension of the use of the code label. On January 17, 1934, Administrative Order X-3 (**) was approved establishing for the first time rules and regulations governing the issuance and suspension of the use of label. The order provided that code authorities when properly constituted shall have the right and authority to:

> "prepare, issue or furnish or cause to be prepared, issued, or furnished to members of respective industries, labels bearing emblems or insignia of the National Recovery Administration. Said code authority shall not refuse the issuance of labels to an applicant on the grounds of non-comoliance unless said code authority at the time of refusal is prepared to certify to the National Recovery Administration in prima facie case of non-compliance with the code or with valid rules or regulation of the code authority by the applicant."

1. Conflicting Jurisdiction over Use of Blue Eagle Insignia on Code Labels.

Until a code blue eagle was created, in 1934, the blue eagle and its reproduction were primarily associated with the President's Reemployment Agreement. NRA Circular #1 (***) specifically mentioned that manufacturers of labels could secure authorization to reproduce such labels for PRA members, provided they themselves had signed the President's Reemployment Agreement. Many of these label manufacturers secured authorization from the National Recovery Administration to produce a variety of labels embodying the blue eagle. At the same time, the code labels began to appear with the same blue eagle. Confusion naturally resulted.

(*) Further to effectuate the provisions of this code and to eliminate substandard and sweatshop conditions in the coat and suit industry, all garments manufactured or distributed shall bear an NIRA label, which shall be attached to every garment. It shall bear a registration number especially assigned to each employer in the industry and remain attached to such garment when placed on sale by the retail distributor. All employers, as herein defined, whether or not members of the associations herein mentioned, may apply to the coat and suit code authority for a permit to use the NIRA label which permit to use the label shall be granted to them but only if they comply with the standards set forth in this code. The coat and suit code authority hereinafter mentioned shall establish the appropriate machinery for the issuance of labels, inspection, examination and supervision of employers engaged in the industry of such garments."
Codes of fair competition, Volume I, Page 56.

(**) For the text of this order, see Volume 5, codes of fair competition, Page 778.

(***) (Washington) Government Printing Office for complete text.

The code authorities complained to the Administration that labels similar to those issued under the mandatory label provisions were being sold to their members by outside manufacturers. In most cases these manufacturers had obtained permission from the Administration to reproduce the blue eagle and their labels were not intended to be deceptive. The code authorities proceeded on the assumption that they had a monopoly on NRA labels, although the codes did not specifically confer any such monopoly. To ease the situation, the Insignia Section of NRA wrote to to all authorized reproducers (*), narrowing the authorization previously extended them so that it did not include permission to reproduce insignia on labels in any way indicating that the insignia or label had been manufactured under a code authority or to reproduce code authority serial registration numbers upon their insignia. Finally, in May, 1934, Administrative Order X-38 (**) formally forbade such manufacture and, in effect, created an exclusive right in favor of each code authority administering approved label provisions. Prior to the above order, Administrative Order X-3, heretofore mentioned, had granted to the code authorities the exclusive right to issue labels to industry members.

(*) See Appendix (B) for copy of instructions.

(**) For the text of this Order see Volume 11, Codes of Fair Competition, page 792.

2. Industries Adopting Label Provisions

In the early days of code-making, it was generally the practice of groups proposing codes to compare provisions desired with provisions submitted in proposed or previously approved codes for other industries. In many cases, codes submitted by small industry groups were made up of clippings of provisions from proposed codes for several other industries. Thus it was that code #5 for the coat and suit industry established a precedent much relied upon by other needle-work industries in the formulation of their code provisions for the mandatory use of code labels.

Code #7, approved August 14, 1933 for the corset and brassiere industry, was the second code to contain a label provision. This was followed by code #15 for the men's clothing industry, approved August 26, 1933 and code #64 for the dress manufacturing industry, approved October 31, 1933.

On October 21, 1933, the most potent device of an effective code label was introduced. It was on that date that code #60 for the retail trades was approved. Article IX, section 2 of that code contained the following provision:

> "No retailer shall purchase, sell or exchange any merchandise manufactured under a code of fair competition, which requires such merchandise to bear an NRA label, unless such merchandise bears such label." (*)

The few words contained in the above provision had a more far-reaching effect than anyone could possibly have expected. (**)

(*) See Volume II, Codes of Fair Competition, Page 38.

(**) Subsequently the following codes containing mandatory labor provisions were approved:
Code #151, for the millinery industry, approved December 15,1933;
Code #164, approved December 18, 1933, for the Knitted Outerwear Industry;
Code #194, approved December 30, 1933, for the Blouse and Skirt Manufacturing Industry;
Code #211, approved January 16, 1934 for the Robe and Allied Products Industry;
Code #259, for the Hat Manufacturing Industry, approved February 15, 1934;
Code #332, approved March 14, 1934, for the Ladies' Handbag Industry;
Code #373, approved March 27, 1934 for the Infants' and Children's Wear Industry;
Code #408, approved April 27,1934 for the Undergarment and Negligee Industry;
Code #436, approved May 19, 1934 for the Fur Manufacturing Industry;
Code #457, approved June 5, 1934 for the Cap and Cloth Hat Manufacturing Industry; and
Code #494, approved July 31, 1934 for the Merchant and Custom Tailoring Industry.

The codes listed in the margin all contained mandatory label provisions in the form in which they were originally approved. Many other industries submitted proposed codes which contained permissive label provisions. Other contained provisions permitting the code authority, at a later date, to employ the use of labels in the industry subject to the approval of the Administrator. Of this latter group of codes, code #23 for the underwear and allied products industry approved on September 18, 1933 was the first. At the time of the submission of the code for this industry, there was much opposition to the control of industry standards by any group or groups. Thus, even in the matter of contributions other than by means of labels, the several associations within the industry attempted to finance the code authority through association funds rather than through general industry contributions. (*).

On July 13, 1934, amendment #4 was approved for this industry. The amendment contained the following provision:

"All products exceeding knitted underwear manufactured or distributed under the provisions of this code may bear an N.R.A. label,...(**).

It is interesting to note that the above provision is in no wise mandatory, and denies even the permissive use of labels to those members of the industry manufacturing knitted underwear. Many pages could be written about the why's and wherefore's of this particular provision. It is also interesting to note that in this industry the controlling factors in the industry and those persons having the preponderance of the voting power in the code authority were the manufacturers of knitted underwear.

Code #29, approved September 7, 1933 for the artificial flower and feather industry was amended on August 14, 1934 by adding to it a provision making it mandatory that "all invoices and copies thereof covering products manufacturing or distributed subject to the provisions of this code, shall bear an NRA label.(***). It is interesting to note that in this industry the term "label" is used when, in fact, what is meant is a printed insignia on invoices. The use of the word label, however, was intentional. During the first month's operation, the code authority found that it was impossible to obtain revenue through the regular assessment provisions.

(*) "Any employer may participate in any activities of the underwear institute and in the preparation of any revision of, or additions or supplements, to this code by assuming the proper prorata share of the cost and responsibility of creating and administering it. Even by becoming a member of the underwear institute or by paying to it an amount equal to the dues from time to time provided to be paid by a member in like situation of the underwear institute." See Volume I Codes of Fair Competition, Page 320.

(**) The text of the amendment is published in volume 13, codes of fair competition, page 310.

(***) See Volume XV, codes of fair competition, page 293.

An attempt was made by the code authority members to have provisions added to the code making it mandatory that labels be affixed to all products of the industry. This proposal, however, was strenuously objected to by members of the industry and the objection was sustained by the Administration. (*). When one considers that this industry's products vary in price from a fraction of a cent to $1,00 and more, that the cost of affixing a label to these very low cost flowers would, in many instances, be as great as the cost of the flower itself and that, further, when one considers that the cost of administering the very use of the label itself, because of the extremely great volume of low-priced flowers, it becomes more apparent why the Administration found it necessary to deny the industry's petition to permit it to have a mandatory label provision. The use of the mandatory insignia on invoices, though not an absolute cure for the difficulties of collection of assessments, nevertheless was of some assistance.

Code No. 51, approved October 9, 1933, for the umbrella manufacturing industry was amended on February 2, 1934, providing for the mandatory use of the code label. (**).

Code #156 for the rainwear division of the rubber manufacturing industry, approved December 15, 1933, was amended on April 30, 1934, providing that no products of the division shall be sold or shipped by any member of the division unless said product bears an NRA label.(***).

Code #161 for the fur dressing and fur dyeing industry, approved December 18, 1933 provided that an "NRA Insignia" be stamped on fur skins dressed, dyed or otherwise processed. Article X of the code also provided that each member of the industry should have a registration number which was to be stamped on the furs.(****).

Code #226 for the light sewing industries except garments, approved January 23, 1934 was amended on November 14, 1934 to provided that all members of the mattress cover, comfortable and quilting divisions of the industry shall affix to all their products official labels issued by the respective divisional committees, bearing thereon the NRA insignia.(*****).

Code #276 for the oleating, stitching and bonnaz and hand embroidery industry, approved February 10, 1934 was amended on January 14, 1935 to provide that:

> "All bundles of garments on which an operation coming within the definition of the term 'industry' in this code has been performed shall bear the NRA label to symbolize the conditions under which such operations were performed."(******).

(*) Information obtained from former Ass't Deputy Adm. James C. Worthy and deputies files of Feb. and Mar., 1934.
(**) See Volume VI, codes of fair competition, page 608.
(***) The text of this amendment appears in volume IX, codes of fair competition, page 113.
(****) Volume IV, codes of fair competition, page 172.
(*****) Volume XIX, codes of fair competition, page 184.
(******) Volume XX, codes of fair competition, page 219.

Code #133 for the ready made furniture slip covers manufacturing industry, approved February 16, 1934, was amended on November 30, 1934 to provide that:

> "All members of the industry shall affix to all products, official labels issued by the code authority bearing thereon the NRA insignia." (*)

Code #363 for the men's neckwear industry, approved March 24, 1934, was amended on June 15, 1934, to provide that:

> "All products made in the industry shall bear the NRA label."(**)

Code #467 for the cigar manufacturing industry, approved June 19, 1934 was amended on September 21, 1934 to provide that:

> "All cigars manufactured or distributed subject to the provisions of this code shall have an NRA label in the form of a stamp to be affixed to the outside of the container thereof." (***)

Due to the fact that cigars have been taxed for many years by the Internal Revenue Department of the Government, the cigar manufacturing industry code authority did not have much difficulty of locating and keeping track of the various members of the industry. The principal drawback to the use of labels by this industry was that the retailers were not required to insist upon the attachment of the label. The retail code provided that where labels are required to be affixed to "merchandise" the retailer would be in violation of his code if such label were not so affixed. Legal advice was that this could not be construed to include placing labels on containers. The operation of this code and the effect of the use of labels in it tend to show very clearly the potent effect of retailer cooperation on the effective use of code labels.

Code #60 supplement #3, for the retail custom millinery trade, approved January 25, 1935, contained the provision that:

> "All custom made millinery made and sold subject to the provisions of this Supplementary Code shall bear an NRA label."(****)

The sale of labels by the Retail Customs Millinery Code Authority did not commence until April 6, 1935 and there is no information in the files as to the prices charged for them nor did the code authority submit any cases of violation. There were some complaints that this code authority was attempting to encroach upon the territory of the millinery industry in furthering the sales of labels but there was insufficient time before the termination of the codes to determine the truth of these charges. The writer, in the capacity of general counsel to the millinery code authority received from small custom milliners numerous complaints of the activities of the custom millinery code authority. These complaints

(*) Volume XIX, codes of fair competition, page 299.
(**) Volume XII, codes of fair competition, page 229.
(***) Volume XVII, codes of fair competition, page 158.
(****) For the text of this amendment, see Volume XXI, codes of fair competition, page 493.

were chiefly that solicitors from the code authority's office insisted upon the purchase of labels by the small shops in a minimum amount of $15.00 and since a goodly portion of the above industry is composed of women who make custom millinery in their own homes, oftentimes wholly dependent upon this income for their livelihood, a request for even the small sum of $15.00 seemed to them unfair and oppressive. The code authority actually had no opportunity to attempt enforcement of the code provisions. Their administrative organization had not begun to function fully at the time of the Supreme Court decision in the Schechter Case.

Code #118 for the cotton garment industry, approved November 17, 1933, was amended March 10, 1934 to provide that: "All garments made in the industry shall bear an NRA label."(*).

A complete study of this industry, with its many different products, with factories in all parts of the forty-eight states, would clearly show the wholesome effect of the power of the NRA label in effecting code compliance.

3. Industries not Adapted to the Use of Labels and Desiring the Use Thereof

Many industries, recognizing the difficulty of raising revenue and enforcing compliance, believed that an amendment to their codes providing for the mandatory use of labels, would be a cure-all. Some of these industries are found in the group which amended their codes to provide for such mandatory use of labels. There were, however, many others which unsuccessfully petitioned the Administration for such amendments to their codes. The code authority for the handkerchief industry made several attempts to amend their code to provide for some form of label. Their first suggestion proposed a sticker-label on handkerchiefs. This was objected to by the vast majority of the members of the industry, who claimed that to affix a sticker-label to a fine handkerchief would tend to diminish its value. It then was suggested that labels be affixed to packaged handkerchiefs. Again a difficulty arose because of the fact that handkerchiefs boxes vary widely in the number of handkerchiefs they contain, their capacity ranging from one, three, six, twelve to as many as 144 handkerchiefs. The third plan suggested by the code authority was to affix a number of labels to a package, depending upon the number of handkerchiefs in each package. This was objected to by both the Administration and members of the industry because of the duplication of expense.

The covered button industry, through its code authority, also attempted to have its code amended to provide for the mandatory use of labels. Here again the difficulty of affixing the label to supplemental parts of a garment or to a bundle of several supplemental parts or to police the activities of small one-man shops to enforce the use of labels, definitely indicated insurmountable difficulties.

(*) Volume VII, codes of fair competition, page 658.

4. The Prison Labor Compact Insignia

Immediately after the approval of the amendment to the cotton garment code, adopting rules and regulations for the use of code labels,(*). complaints were received by the Administration from manufacturers and jobbers dealing in prison-made goods alleging that the code authority for the cotton garment industry and code authorities for other industry and code authorities for other industries making products similar to those made by prison labor, refused to issue code labels to be affixed to prison-made goods. The code authority officials claimed that such prison-made goods were not made in conformance with code provisions and, therefore, could not bear the code label. This refusal on the part of code authorities to supply distributors of prison-made goods with labels acted as an effective bar to the sale of such goods to retail stores. Conferences were called by the Administration between persons dealing in prison-made goods and the several code authorities. As a result of these conferences, the Prison Labor Compact (**) was agreed upon. This compact provided that prison-made goods would be sold at prices on a par with competitive items made under code provisions. To carry out the purposes of this compact, on May 3, 1934 Administrative Orders Nos. V-2 and V-2 were issued establishing an NRA Identification Symbol to be used on merchandise made in penal or correctional institutions.(***). The symbol was similar to the NRA insignia previously issued to employers under the FRA except that the word "member" was to be omitted and the printed letters "Ident. No.____" to be placed below the words "We Do Our Part." The issuance of the symbol with separate registration numbers assigned by the Prison Label Authority (which was established to carry out the purposes of the compact;) was made mandatory, whenever similar goods in applicable industries were required to bear an NRA label. The procedure set up by Administrative Order V-3 was somewhat similar to that for code authorities administering codes with mandatory label provisions.

5. Sheltered Workshop Insignia

Sheltered workshops or charitable institutions met with similar difficulties in trying to sell their merchandise to retail outlets. In order to correct this situation, Administrative Orders X-9, X-28, X-59, X-81, X-111 and X-111-1 were issued, citing Administrative authority conferred by Executive Order 6543-A(****) and other Executive Orders.

(*) Volume VII, codes of fair competition, page 658.

(**) Where any penal reformatory or correctional institution, either by subscribing to the code, or contact, herein above referred to, or by binding agreement of any other nature, satisfies the administrator that merchandise produced in such institution, or by the inmates thereof, will not be sold except upon a fair competition basis, with similar merchandise not sold produced ....."
For full text, see Vol. 9, Codes of Fair Competition, p. 734.

(***) Washington Government Printing Office.

(****) Volume 4, codes of fair competition, page 689.

Order X-9 (*), in granting sheltered workshops conditional exemption from approved codes on condition that the pledge described in that order was signed and complied with, stated that the workshop so doing would be entitled to the use of any appropriate insignia of the NRA. In case of pledge violation, the National Committee was to certify the full record in the case to NRA for revocation of the right to use the insignia.

Order X-23 (**) appointed the members of the Sheltered Workshop Committee and established an appropriate insignia. This insignia was to consist of the existing blue eagle without the word "member", but with the phrase "S.". Permit "_____." following the words ""e Do Our Part". The insignia, with its assigned number, was required by the order to appear on all products made by sheltered workshops where similar goods privately manufactured were required to bear a label. If the goods were sold by a sheltered workshop, they were not required to bear this insignia. Presumably such selling referred to direct sales to consumers.

Order X-59 and Order X-81 (***) amending and supplemention it, provided the machinery for the issuance of labels bearing the sheltered workshop insignia and made the use of labels mandatory on sheltered workshop products where, if it were not for the code exemption granted by the Administrative Order, X-9 such products would have been subject to certain mandatory code label provisions.

Order X-111 appointed members of the National Sheltered Workshop Committee and was followed three months later by Order X-111-1 amending the procedure incident to withdrawal of the right to use labels and to exhibit insignia.

(*) Volume 7, codes of fair competition, page 727.

(**) ".... I hereby appoint as members of the "ational Sheltered Workshop Committee" for the term of six months from this date:
r. Oscar ". Sullivan-----
'r. Oliver A. Friedman----
'r. Peter J. Salmon-------

For full test see Volume X codes of fair competition page 961

(***) Volume XVI, codes of fair competition, page 548.

CHAPTER III

EFFECT ON CODE ENFORCEMENT

At the time of its inception, there was no idea to regularly make use of the code label as an enforcement device. Its principal purpose was to signify to all, the products of manufacturers made under fair competitive conditions and those of manufacturers made under conditions other than those provided in the codes. The provision pertaining to labels in the retail trade code was the first step in making the code label an instrumentality of code enforcement. It was this latter code provision which, in part, provided that it was a violation of the retail code for a number to purchase products from a member of another industry unless such product bore a label when the code governing the making of such product required the use of labels.

The effectiveness of code labels was largely dependent upon support by employers, labor and the consuming public. The provision of the retail trade code was most helpful in bringing about effective label use. This fact became evident shortly after industries began to adopt the use of labels. The attitude of the public concerning the use or non-use of blue eagles had changed from a strong resentment against non-users to one of passive acceptance of products with or without insignia.

Members of industry, manufacturing their products under codes containing mandatory label provisions, were not benefited by this change of attitude. There were two obstacles to code non-compliance confronting them constantly: one, the retail store would refuse to purchase unlabeled products because such a purchase would be a violation of the retail code, and, two, the retail store might return merchandise purchased on threat of prosecution by the retail trades code authority.

1. Consumer Demand for Products Bearing Labels

The public's response to the original use of blue eagles was spontaneous and patriotic. The first blue eagle Consumer Drives, during the signing of the PRA by two million employers, made the work of local NRA Committees in securing consumer pledges of cooperation comparatively easy. The urge to display the consumer insignia by those signing the pledge required the manufacture of some seventy million of these stickers. Labor and labor organizations were highly in favor of the purposes to which the insignia was dedicated and lent their hearty support to help carry out the purposes.

The consumer demand for blue eagle stickers or consumer insignia made the use of code labels, at least during the early days, an absolute necessity. Waning of public interest in the use of code labels was never definitely ascertained. Attempts were made in different parts of the country by employers of labor to discontinue the use of the blue eagle insignia and not infrequently, after such attempts, the employer submitted requests to the Administration for the reissuance of and the right to use the blue eagle once more.

2. Registration Numbers

Under the use of code labels a system of registration or identification numbers grew up. It was the practice of almost every industry to assign to each manufacturer a special registration or serial number(*) or, in a few instances, merely to have each label numbered, serially, and to record these numbers assigned to a given manufacturer at a given time. Through this method it was possible for code authorities to identify each item manufactured by the members of their industry and, in certain instances, where products were found being sold at prices either below the normal cost of such product, it was possible for the code authority to make a thorough investigation and to check the compliance or non-compliance of the individual number. Many code authorities used this registration system as a check on the truth or untruth of payroll reports submitted. In one instance in the coat and suit industry, payroll records indicated that employees were working 24 and 25 hours a week; their earnings were fully in accordance with the provisions of the code for such hours, yet it was found by a check on the number of labels used that the employees could not possibly have produced as many items in the space of time alloted as had been produced by this company. An investigation into the facts in the case disclosed the violation, and brought about the restitution of a large sum of money to the employees.

In August of 1933, a report was submitted by the Coat and Suit Code Authority that certain members of that industry were violating provisions of the code and, in some cases, selling goods without labels. The code authority, after making several attempts to secure compliance, organized the women of Tulsa, Oklahoma, into a Shopping Committee to ascertain whether or not members of the industry had labels attached to their merchandise. The purpose of the label was explained to the women and soon such pressure was brought to bear on the merchants who did not have labels on their goods that they complied with the code in order to be able to use the label. This effort proved so successful in bringing about compliance that the Coat and Suit Code Authority proceeded to make every effort to organize consumer groups throughout the country. The method proved to be the cheapest and most effective means of code enforcement. Mr. Alger, the director of the Code Authority, stated that if the codes were to be enforced, the public must want them enforced.(**) The label is the greatest safeguard to both consumer and labor. Some time after the successful compliance campaign in Tulsa, Miss Bessie Betty, former editor of McCall's was selected by the Coat and Suit Code Authority to carry on the campaign on a larger scale. Other code authorities, realizing the value of such a campaign, offered their cooperation. The campaign directed by Miss Betty was called the "National Garment Campaign".

In February of 1934, a group of label code authorities met and discussed ways and means to perfect and extend the use of the label. It was from this meeting that the label council idea developed. The original

---

(*) See appendix (C) for copies of labels showing serial numbers used.

(**) See Volume (C) Report of label project committee page 613.

purpose of t. is orgnization was as follows:

1. To get better retail buyers' acceptance of code labels;

2. To provide for the cooperation necessary between the label code authorities and to keep down many of the multiplicities of inspection of the retailers which seemed to irritate them and cause strong protests; and

3. To keep constant the consumer interest in label-bearing products.

3. Suspension of the Issuance of Labels

Shortly after the approval of codes containing mandatory label provisions complaints began to reach the Administration alleging that code authorities were refusing to issue or were suspending the issuance of labels, without just cause. As early as January 17, 1934, Administrative Order No. X-3 was issued, providing in part that -

".....such code authority shall not refuse the issuance of labels to an applicant on the grounds of non-compliance unless said code authority is, at the time of the refusal, prepared to certify to the National Recovery Administration a prima facie case of non-compliance with the code or with valid rules and regulations of the code authority by the applicant.

"In the event said code authority refuses the issuance of said labels, a complete file showing the alleged non-compliance by the applicant shall be certified not later than the day following said refusal to the National Recovery Administration for action by the National Compliance Director.

"All other refusals of issuance of labels shall immediately be certified to the National Recovery Administration with a complete file showing the grounds for said refusal."....(*)

Immediately after the issuance of Administrative Order No. X-3 a slight let-down in the number of complaints regarding suspension of the issuance of labels was felt in NRA. The let-down, however, was short-lived. Code authorities once more began the practice of suspending the issuance of labels on slight provocation, often making excessive demands for restitution or costs prior to returning the right to use the label. Complaints were received that code authorities were refusing to issue labels unless members of the industry paid registration fees of varying sums of money; in one instance, as much as $50.00 was demanded (**) of each member of the industry before he was entitled to the use of the code label. Other complaints alleged that fines were imposed by code authority officials varying from $50 to $500 and, in a few rare

---

(*) Washington Government Printing Office. 1933.

(**) See report on millinery industry deputy files of Feb. 1934.

cases, as high as $1160. The large number of these complaints brought about an investigation by the legal division of the Administration in February of 1934. At that time, Mr. Chas. G. Raphael, Assistant Counsel in the Legal Division, was sent to New York to make an investigation of all label-using code authorities to ascertain the truth of the complaints relative to assessing fines, demanding registration fees, and the holding of arbitrary compliance hearings. The report of Mr. Raphael, a copy of which can be found in the files of Blackwell Smith, formerly Associate General Counsel, was instrumental in bringing about a revision of administration policy on the use and suspension of the use of labels. The plan briefly provided for submission of budgets by code authorities, showing the reasonableness of the charges made for labels, required the keeping of funds in trust accounts, the creation of impartial agencies to adjudicate compliance matters and the submission of a file on every case to the Administration.

Administrative Order No. X-38 was the outgrowth of the above recommendations. This Order attempted to embrace all of the beneficial provisions of the previous orders and to more clearly establish an equitable procedure for the regulation of mandatory label provisions. Among other things, it provided that the exclusive power to issue labels should be vested in the code authority, that contracts for the purchase of labels should be made through competitive bids, that no member of an industry should use or deal in any label bearing the NRA emblem, other than that issued by the code authority. It provided that every member of an industry should have labels issued to him so long as he was in compliance with code provisions, that the Administration reserved the power to withdraw or withhold labels, except that -

"....

"(d) Whenever the code authority shall have cause to believe that anyone subject to the code has violated any provision of the code or of the act or of any rule or regulation duly adopted, pursuant thereto, it shall give due notice of the charge against him and shall afford adequate opportunity to be heard. A substantial record of all such hearings shall be made. If, after such hearings, in the judgment of the code authority, there is sufficient evidence of violation to justify such action, the code authority may suspend the issuance of labels to such person or firm; immediately and in no case later than the day following the suspension of the issuance of labels, the code authority shall file a summary of the record of the hearing with such recommendations as it may deem proper, with the NRA Compliance Division or such branch thereof as it may designate. The NRA Compliance Division or designated branch thereof shall have power, upon the record or after further hearing, to withhold the issuance of labels, to withdraw the right to use labels, to affirm, suspend or mortify the action of the code authority or to take such other appropriate action as it may deem necessary. Any such conferences or hearings as may be held by the NRA Compliance Division or designated branch thereof, the code authority shall be given an opportunity to participate.

"That code authorities shall give no publicity in cases of alleged violations until an adjustment has been effected. That no person shall, for the purpose of obtaining labels, represent he is complying with the code if, in fact, he is not so complying. That the charge for labels by code authorities shall, at all times, be subject to the provision and orders of the Administrator. That on or before November 1 of each year, every code authority shall submit to the Administrator plans for fixing the charge for labels. To submit a budget for the disbursement of administrative expenses, listing salaries and duties of all officers. To submit monthly financial and operating statements. To deposit all monies collected in a properly designated bank, subject to withdrawal by a bonded official. That officials of code authorities violating this order were subject to the penalties of the NIRA."(*)

Administrative Order No. X-38 filled a gap in the rules and regulations and developed a definite procedure for the proper administration of label provisions. Among other changes provided for by the Order was the creation of an agency within NRA for making a final adjudication upon the reasonableness or lack of reasonableness of the basis of the suspension of the use of labels by code authorities. This shifting of responsibility to the Administration created such a tremendous flood of new work that, in many instances, files submitted by code authorities were not acted upon for periods of two or three weeks. Thus it was possible for a code authority to suspend the issuance of labels, submit a file on the case to the Administration within 24 hours; the Administration would not act for some two or three weeks and, in the meantime, the industry member would be faced with the difficulty of producing merchandise for which he had no labels. This latter situation resulted in many complaints from members of industry.(**) The suspension of the issuance of labels, they contended, was the equivalent of withdrawal if suspension occurred during the peak seasons or, if the case was not speedily disposed of. Unjust and improper suspension for questionable motives may or may not have occurred. The point is that such improper suspensions were possible and there seemed to be a myriad of possible motives. The legality of the delegation of such power of "suspension" and its possible effect as a "withdrawal" was brought into question. The result was an amended procedure.

4. The Label Agency

On August 25, 1934, Mr. Edward L. Fries, formerly of the Industrial Advisory Board, was transferred to the regional office at 45 Broadway, New York City and appointed Label Review Officer. It was his duty to review immediately all cases of suspension of the use of labels that were brought to his attention. Knowledge of the existence of this office gradually permeated industry and the volume of cases referred to it steadily increased. At the time of the inception of this new Label Review

---

(*) Washington, Government Printing Office. 1934.

(**) Preliminary Report of D. G. Edwards "Review of N.R.A. Label Agency Activities" N.R.A. Archives.

Officer. Likewise, the creation of this new office in no way limited the powers of suspension of the issuance of labels by code authorities." The purpose of the office was definite, however, that is, to act with speed and dispatch in ordering code authorities to issue labels in all cases where the files submitted to Mr. Fries indicated a doubt as to the reasonableness of the basis for suspension. Shortly after the creation of this new office, complaints of unjust suspension of issuance of labels fell off with remarkable precipitancy. In October of 1934 a conference with representatives of code authorities of industries having mandatory label provisions was called in New York City and there resulted therefrom an ad interim letter, signed by Prentiss L. Coonley, Division Administrator, which limited the suspension of the issuance of labels by code authorities by requiring the express approval of the Label Review Officer.

On November 12, 1934, Mr. Fries was transferred to the Pacific Coast with headquarters at Los Angeles, to take over the label review work for the ten states of California, Oregon, Washington, Nevada, Idaho, Montana, Wyoming, Colorado, Utah and Arizona. Simultaneously, Dean G. Edwards, Deputy Administrator, Apparel Section, was transferred to New York and assumed the duties relinquished by Mr. Fries.

The New York office became known as the NRA Label Agency with Dean G. Edwards as NRA Label Agent.(*) Mr. Fries was appointed Label Officer for the ten western states, reporting to the Label Agent in New York but, for practical purposes, autonomous as far as jurisdiction within his ten western states was concerned.

The general procedure which was developed in the fall of 1934 was embellished by the provisions of Mr. Coonley's letter. The newly-developed procedure required that no suspension of the issuance of labels could become effective except upon approval of the label agent and an alleged violator of code provisions was usually granted a hearing by the code authority or its duly authorized committee. If the hearing did not result in an adjustment, the case was referred to the label agent with the recommendation for the issuance of labels to be suspended. A full history of the case, a stenographic or stenotype report of the hearing and the charges against the respondent as submitted prior to the hearing of the code authority and other pertinent data was required by the label agency. Where the case was flagrant and the evidence of violation unmistakable, the code authority was directed, in writing, to suspend the issuance of labels to the respondent and to refer the case to the Regional Director,(**) having jurisdiction, within 24 hours. In cases where the file submitted contained insufficient data or was defective because of the lack of proper notice to the respondent, no action was taken by the label agency and the file was referred back to the code authority for correction. In cases where the evidence was insufficient or the basis for the contention of violation was weak, the label agent returned

---

(*) For a more complete report of the activities of the NRA Label Agency see Preliminary report by Dean G. Edwards entitled "Review of NRA Label Agency Activities". N.R.A. Archives.

(**) See appendix (N) for copy of order used by label agency.

the case to the code authority, declining to authorize the suspension of the issuance of labels and informed the code authority of its right to appeal to the Compliance Division in Washington. (*) There was still a third type of case which involved minor types of violations or small amounts of restitution or where it seemed possible to adjust without the suspension of the issuance of labels. In cases of this latter type, the label agent sent a letter to the respondent to inform him that the case had been referred for suspension of the issuance of labels and that unless an adjustment, in accordance with the findings of the code authority, was made by a fixed date - usually ten days after notice - the issuance of labels would be suspended. The creation of this label agency was one of the most praiseworthy acts of the Administration to safeguard the interests of all parties under the use of the mandatory label provision and to retain the benefits derived through such use. Immediate hearings were made possible; respondents were permitted to appear with their representatives; code authority representatives were always present and a member of the NRA Legal Division likewise attended, so that all parties at interest had a fair opportunity to present those matters pertinent to the cause. The establishment of the office of the label agency resulted in correcting possible abuse of the power of code authorities to suspend the issuance of labels. The code authorities did not, in every case, avail themselves of their right to suspend the issuance of labels after review by the label agent but preferred to refer their cases directly to the regional Director for hearing by the compliance councils in the first instance. This latter procedure was adopted in almost every case by the Men's Clothing Code Authority. In such cases labels were constantly issued pending final decision by the Regional Director.

The adoption of administrative orders dealing with the regulation of the issuance and suspension of issuance of labels and the creation of the label agency still left some avenues open for possible abuses of power by code authorities. Many conferences were called, both in New York and in Washington, between representatives of code authorities in industries having mandatory label provisions and representatives of the Administration, to attempt an amicable adjustment and solution of these few remaining abuses or possible abuses. These conferences finally resulted in the adoption of Administrative Order X-135, approved February 25, 1935. The important changes contained in Administrative Order X-135 (**) were:

(*) See Appendix (C) for copy of order used by label agency.

(**) See Appendix (D) for copy of letter to Code Authorities relating to application of order X-135. In NRA Special Exhibits Work Materials No. 84.
See also appendix CC for copy of Adm. Order X-135 (Washington) Government Printing Office for full text.

Clause 3, which required each code authority, within 30 days after the effective date of the Order, to submit new rules and regulations for the sale, issuance and administration of the use of labels as might be necessary to carry out the provisions of the Order.(*) These rules were necessary because many existing code authority rules and regulations pertaining to the use and issuance of labels were restrictive in their nature and contained provisions which tended to amend the code.

Clause 4, which provided that contracts for the purchase of labels shall be by competitive bidding and copies of such contracts shall be kept on file and submitted to NRA if NRA so required. This was necessary because many complaints had been received, alleging that code authorities had entered into contracts for the purchase of labels at excessive rates, to the detriment of the members of the industry in general.

Clause 5 provided that labels shall bear the blue eagle; that labels issued for one price class shall be used on only that price class; that the contents of labels shall be subject to the disapproval of NRA. This latter clause was necessary, first to establish one general recognized insignia for all labels and it is interesting to note that it was not until this order was signed, in February of 1935, that the blue eagle was mentioned in connection with the code label. This clause also make it a violation of the Act for a member of industry to purchase labels for use on one price class then to use it on another, thus defeating the revenue purposes of label sales. This clause also established the right in the Administration to disapprove the contents of labels since so many code authorities had begun a practice of adding to the label extraneous matter which occasioned complaints. Examples of this latter type of abuse were the adding of size tickets, trade-names, material contents, etc.

Clauses 10 and 11 established a difference between the initial issue of labels and subsequent re-issues. This distinction was made necessary because many complaints had been received that code authorities were dilatory in acting upon initial label applications on the claim that they were making investigations to determine the truth or untruth of the claim by the applicant that he was in compliance with code provisions.

Clause 12 definitely established the rule which had heretofore been in practice through verbal understanding, giving to the label agent the sole right to order suspension of the issuance of labels, upon recommendation by the code authorities. This clause likewise established the procedure for the holding of hearings by code authorities, estab-

---

(*) See appendices (Z-1) In NRA Studies special Exhibits - Work Materials No. 84 for copies of rules and regulations adopted by code authorities.
See also appendix CC for copy of A-O X-135.

lished requisites for due notice, methods of conducting hearings and the parties who could be present and preside.

Clause 13 definitely established the powers and duties of the label agent, setting forth the types of findings that he could make. It also provided for a right of appeal by the code authority from the acts of the label agent or from his failure to act within a reasonable length of time.

Clause 14 further described the principles established in clause 13 and, in addition, provided for the right of appeal by the respondent to the Compliance and Enforcement Director.

Clause 15 required code authorities to act in accordance with the direction of the Compliance and Enforcement Director or the NRA label agency in matters pertaining to suspending the issuance of, withdrawing the right to the use of, or resuming the issuance of labels (*) to a given respondent.

Clause 16 established a principle long assumed to have been in effect - that of denying the right of code authorities to impose, demand or accept fines or to demand or accept the payment of the costs of investigations without the express approval of the NRA label agency.

Clause 17 reaffirmed the necessity of code authorities obtaining NRA approval for label charges. It also provided that there shall be no difference in charges for labels to be placed upon the same or different articles to different members of the same industry, without the approval of NRA. This latter part of this clause was necessary because, in a few instances, a practice had grown up of charging more for labels in certain sections of the country than in other sections.

Clause 18 reaffirmed the necessity of submitting budgets for NRA approval.

Clause 19 prohibited code authorities from using funds derived from the sale of labels for the purpose of making contributions to trade associations.

Clause 22 provided that "any person violating sections 5-6-7 or 9 of these regulations or using labels after the right to use such labels has been withdrawn, is subject to the penalties provided in Section 10(a) of the National Industrial Recovery Act." This latter clause was necessary because there had been no prior rule making it a violation of the Act for persons to continue to use labels purchased prior to a detected violation and many cases had arisen where persons, anticipating an adverse decision, purchased excessive amounts of labels to tide them over a long period.

(*) See appendix (P) for copy of form used by label agency.

5. Comparison of Compliance Between a Label Using and a Non-label Using Industry (*)

In making a comparison of the effectiveness of compliance in label and non-label using industries, many things other than just the use of labels must be taken into consideration. For example, the hosiery industry - one of the two industries chosen for purposes of this comparison - does not employ the use of labels and is a highly unionized industry. In this industry, the executive chosen to administer the code was jointly selected by representatives of industry and labor. The effectiveness of the administration of this code and the executive chosen to carry out its provisions were constantly under the scrutiny of leaders of industry and labor. As a result of this dual check, this industry attained possibly the highest degree of compliance to be found in the non-label using industries. A much lesser degree of effective compliance is evidenced in most of the other non-label using industries which were not as completely unionized. Indeed, in many industries where labels were used and the industry was not highly unionized, the extent of compliance effectiveness was not as evident as it was in this non-label using industry. The men's clothing industry, chosen as the industry employing the use of labels, is a highly unionized industry and its executives, likewise, were jointly selected by leaders of industry and labor. Upon examination of the compliance records of the men's clothing industry and the hosiery industry, we find that the men's clothing industry employed far more inspectors than did the hosiery industry and made a more constant check on the activities of industry members and their employees. This was made possible by the greater ease of obtaining the necessary funds to administer the code through the sale of labels.

The men's clothing industry, an industry of more than 2,000 members employing 150,000 workers, is a widely scattered industry with units in almost every state in the Union. The dollar volume of the industry approximated $500,000,000. During the entire period of code operation, there were some 2119 cases of non-compliance of the labor provisions of the code, reported to the NRA. Of these, 258 were found to be unsustained; 1222 were adjusted by the code authority without the necessity of hearings or court action; 411 were adjusted by the code authority after hearings and 228 cases were on hand and not acted upon at the time of the Supreme Court decision in the Schechter case. In all approximately 70 cases were submitted by this code authority to the administration for the purpose of effecting adjustments. During the same period there were 343 cases of non-compliance of trade practice provisions of the code.

(*) All data and information used in this comparison was obtained from an analysis of code compliance compiled by the compliance division of NRA.

Of these cases 3 were found to be unsustained; 242 were adjusted by the code authority without the necessity of hearing; 17 were adjusted by the code authority after hearing; 1 was submitted to the NRA for the purpose of effecting an adjustment and 81 were on hand and unadjusted at the end of the period.

The hosiery industry is composed of 853 manufacturers employing approximately 112,000 workers. The majority of the industry is located in Pennsylvania with the few remaining large units in North Carolina, New York, New Jersey and the Middle West. The dollar volume of the products manufactured by the industry approximates $320,000,000. During the entire period of code operation the code authority reported 273 cases of non-compliance of the labor provisions. Of these, 14 were rejected because they were unsustained by the facts; 169 were adjusted by the code authority without hearing; 47 were adjusted by the code authority after hearing and 52 were on hand and unadjusted at the end of the period. During the same period 15 cases of non-compliance of the trade practice provisions of the code were reported, 14 were adjusted by the code authority without the necessity of hearing and 1 was adjusted after hearing.

On the basis of the figures submitted by the above two code authorities, it is evident that in the men's clothing industry - an industry approximately 70% larger than the hosiery industry - approximately 7 times as many labor violations were discovered and adjusted and 30 times as many trade practice violations were likewise discovered and adjusted over the same period of time.

Examination of reports of the effectiveness of compliance in other label and non-label using industries shows that by far the most helpful aspect of the use of labels was the minimizing of the need for court and administrative action in adjusting non-compliance cases. In a report submitted by Dean G. Edwards, label agent, it was stated:

> ".... Our experience showed that many of these cases could be cleared up by a letter to the respondent informing him that the code authority had referred the case to us and that unless an adjustment, in accordance with the findings of the code authority, was made by a fixed date (usually a week or ten days later) the issuance of labels would be suspended....."(*)

Further proof of the effectiveness of the use of labels in reaching speedy adjustments and correction of industry violations is evidenced by the fact that certain industries which attempted to employ the use of labels but whose products were not adapted to such use had difficulty

---

(*) For the full text of this report see work report by Dean G. Edwards entitled "Review of NRA Label Agency Activities."

in adjusting cases through code authority hearings and had to submit the majority of non-compliance cases to the administration for prosecution. Industries of this latter type included the artificial flower and feather industry, the fur dressing and dyeing industry, the handkerchief industry and slit fabrics industry.

CHAPTER IV

LABELS AS A MEANS OF RAISING REVENUE *

Code Authority control over the issuance of an identifying label was started in order to furnish a more effective method of enforcing code compliance. The use of a label as a means of raising revenue was first suggested by a group of manufacturers in the coat and suit industry who objected to the original plan for a code label in that industry. The basis for the original objection was that the label, being potentially a powerful weapon in the hands of those persons entrusted with the enforcement of the code, it was necessary to see that those persons were not obligated to anyone because of salary payments. Thus, in the very first instance of the approval of a code label provision, the need for using such label provision to raise funds was evidenced. From the very outset, two distinctive methods for raising revenue by means of the code label were developed. In the first method, the price of the label produced all the funds necessary to administer the code. In the second method, labels were sold at a stated price - usually cost - and the funds necessary to administer the code were later collected by means of an assessment. In some cases, the label was sold at a very low price and the assessment was correspondingly high, in other cases, the label price was calculated to produce sufficient revenue to finance the operations of the code authority and the assessment represented an adjustment between the price paid for the label and the amount of the assessment equitably prorated between all members of the industry.

In either of the above cases the individual industry member was required to pay the full assessment in order to have the privilege of the use of the label.

Of the 29 larger industries using code labels, 17 obtained all of their funds from the sale of labels and 12 used a combination of sale of labels and some other basis of assessment. Of the 17 code authorities obtaining all funds from the sale of labels, 5 sold labels at a single price while the balance sold them at a sliding scale of prices according to the value of the article to which the label was to be affixed.

In a study** of the effect of the mandatory assessment clause in codes, other than those containing label provisions it was estimated that the average effectiveness of collections was about 75%. This estimate was based on a comparison of actual income received with previously estimated potential income, with an adjustment based on statements made by code authority representatives that the cash collection of 80% of potential.

---

*For a more detailed report on the raising of Revenue through sale of labels, see report of Daniel House and J.D. Kershner entitled "Study of Labels as a Means of Raising Revenues".
(Code Administration Studies Section finance Unit.)

**See Study IV, Code Administration Studies Section, Finance Report.

revenue would represent 100% effectiveness. Thus we find that in the aggregate codes other than those containing label provisions were successful in collection of only 60% of the amount estimated and 75% of the estimates on an adjusted basis. Using the same comparison and making the same adjustments, it was found that collections in codes containing the label provisions were about 102% effective in collecting assessments. It, therefore, appears that the only feasible conclusion would be that code authorities administering codes containing a label provision had less difficulty in supplying themselves with funds than code authorities obtaining funds in any other manner. The examination of the budgets and bases of contribution and proposed charges for labels were rendered difficult by the very fact that funds were easy to collect and code authorities were reluctant to refrain from collecting funds from the sale of labels until such time as budgets were approved by the Administration. Practically all of the codes under which labels were sold, in addition to a statement setting forth the right to issue labels, contained, in substance, the following provision:

> "The charge made for such labels shall at all times be subject to the supervision and orders of the Administrator and shall be not more than an amount necessary to cover the actual reasonable cost thereof, including the actual printing, distribution, administration and supervision of the use thereof, as hereinabove set forth." *

When the early budgets were submitted, the tendency was to give wide latitude in determining the lengths to which funds could be collected for the purpose of enforcing the label provision. Inspection, examination and supervision extended from a simple investigation of the books and records of an industry member after a complaint, to a regular thorough examination of the books and records of each industry member by trained investigators who might even go so far as to interview employees.

Proposed budgets submitted by code authorities obtaining funds through the sale of labels were more carefully scrutinized than other budgets. The cost for proposed compliance activities were isolated from other costs and compared with the proposed costs of compliance activities of other code authorities. The proponents of a budget were required to defend the type of supervision and inspection that they planned to follow. All budgets of this type were submitted to the Compliance Division of NRA for its comments as to the reasonableness of the methods proposed in assuring that the "symbolism of the label will be maintained."

As early as February of 1934, much discussion had arisen as to the extent to which funds obtained through the sale of labels could be

---

* General provision contained in majority of codes having label provisions.

used for general code administration purposes. There developed within the Administration, two distinctive schools of thought -- one holding that the words contained in the label provision setting forth the right to collect funds for the purpose of inspecting to insure that the "symbolism of the label will be maintained" did not entitle code authorities to charge prices for labels which would result in a sufficient income to meet all code administration expenses. The second school believed that it was impossible to separate those expenses of code administration which were directly connected with the administration of the label provisions and those which pertained to the administration of other aspects of the code. Thus, according to the second school, all expenses of code administration should and could be derived from funds obtained through the sale of labels. This divided opinion between officials of the Administration was the chief reason for the two methods of obtaining revenue indicated in the examination of the 39 larger industries using code labels.

At the industry hearings on March 4, 1934, representatives of several code authorities entered into heated arguments with administration representatives, claiming that one policy should be established as to the extent to which label funds could be used to pay code administration expenses, the general opinion of the code authority representatives being that the method of selling labels at actual cost, then later obtaining equitable prorata assessments from members of the industry was necessarily costly, accomplished no worthwhile purpose and did not strengthen the legality of label charges. There can be no doubt that the use of a code label as a means of obtaining revenue to defray code administration expenses was a most effective method; however, the administrative policy should have been outlined in sufficient detail to enable the groups to know the definite limits of authority and responsibility in incurring obligations and the extent to which label funds should have been used in defraying such obligations.

The problem from a financial standpoint resolved itself into determining the "point of diminishing returns". Admitting that the label-using industries have a more effective enforcement and compliance activity, it is obvious that at some point a code authority could be over-zealous and not only waste funds but antagonize industry members by virtue of over-supervision. The problem of any supervisory agency over the activities of code authorities should be to ascertain that sufficient funds are spent for proper compliance activities without waste or antagonism.

1. Assessment Problems

All of the orders issued by NRA on the subject of levying assessments required that the basis for any assessment levied should be "equitable". The measures for determining whether or not a proposed basis of contribution was equitable would be the same whether labels were sold or not. Labels were construed to be a device rather than a method and the charge for labels was scrutinized in the same manner as any other basis of assessment. Five code authorities employed a method of charging one fixed price for labels. This price was computed to be sufficient to cover

both the physical cost of the labels and an assessment toward the expenses of administering the code. This method, however, could only be deemed equitable in industries where the price of the product manufactured were confined to an exceedingly narrow range. If this method of pricing labels were applied to an industry in which the price of industry products had a wide range, inequities would become apparent, for example; if a charge of $20.00 per thousand were placed on labels and one manufacturer made products to sell at $10.00 per unit, his label cost would approximate 1/5 of 1%, whereas if, in the same industry, another manufacturer made products selling at $100.00 per unit, his label cost would only be 1/50 of 1%. Thus, as between the two manufacturers, one is bearing ten times the greater burden of code assessment than the other. Several code authorities employed a method of charging a fixed price for labels plus assessment on percentage of sales. Under this plan, each industry member was required to purchase labels at actual cost and later was assessed by the code authority to cover the cost of administration. This plan was unquestionably the most equitable but many industry members considered the payment for labels as one assessment and the actual assessment as a second and protested the payment of "double taxation". A relatively small group of code authorities employed a method of selling labels at a fixed price, which included the cost of the labels plus an amount determined by the code authority to be sufficient to administer the code, with a periodic adjustment based upon the amount of money received from the manufacturer as a result of the purchase of labels and the prorata assessment that should be paid by the manufacturer, based upon his percentage of sales. This plan, apparently, was the most ideal in that it provided a fair and equitable method of assessment. It often resulted in a rebate to the manufacturer and there was no dual taxation. The majority of the code authorities used a method of sliding scale prices for labels. Under this method, the products of the industry were divided into a number of price classes and distinctive labels were designed to be placed on the products of each price class. The charges for the labels were computed in such a manner as to scale the cost of labels to a direct and equitable percentage of sales. This method represented a slight variation from the straight percentage of sales method and had as its virtue the factor that it simplified accounting methods and was less bothersome to the individual industry member. Under this method, the sale of labels was equivalent ot assessments on a flat rate, based upon percentage of sales. The difficulty of this particular method was chiefly evidenced in the early days of code administration and resulted from the inability on the part of the code authority officials to properly determine the quantities of products sold within each price range so as to enable them to fix a price, which, in every instance, would work out an equitable assessment. The best example of this difficulty is evidenced by a study of the use of labels in the knitted outerwear industry.* In that industry, the percentage of the physical cost of the label itself represented a tremendously high percentage of the gross income thus representing waste and an excessive burden on knitted outerwear manufacturers making lower priced goods. However, within six months from the effective date of that code,

* See Chapter IV of part 4 "A Study of the Knit Goods Industry."

more complete knowledge of the volume within price ranges made it possible for the code authority to readjust its label prices and scale down the physical cost of the label to such a point that members of the industry making higher and lower priced goods paid equitable assessments.

The coat and suit industry recommended a regional differential in the price of labels. It appeared that members of the industry in the western area, through their association representatives, desired to have all members of the industry in that area pay a slightly higher price for labels than was being paid in the east. It was proposed that the additional income would be turned over to representatives of the western manufacturers for the purpose of industry betterment within the region. There may be good reason for the adoption of such regional differentials, but the abuses that could be practiced make such a plan dangerous.

In the case of the custom millinery trade, it was proposed that the labels be sold at a rate of 1½¢ each, with the proviso that members of the trade who, during the budgetary period, paid a total amount for labels in excess of ½ of 1% of gross sales, would receive a rebate equal to the amount of the excess payment

A comparison of the total amount of the budget for the industry to the total amount of sales for the industry indicated that the rate of assessment amounted to approximately ¼ of 1% of gross sales. Absolute equity, therefore, would require an adjustment on the basis of the payment of ¼ of 1% of gross sales instead of ½ of 1% as proposed. The adjustment was admittedly crude and was developed as a compromise between the code authority and the Administration since the code authority insisted that no adjustment was required and the administration insisted that the payment for labels should be adjusted to the basis of one-quarter of one per cent of gross sales. Two other code authorities submitted plans similar to the one hereinabove mentioned; the administration, however, refused to accept the plan and advised the adoption of a plan embodying the flat charge for labels, with an equitable adjustment based upon actual percentage of sales.

2. Administrative Problems

A difficult problem arose through the operation of Paragraph III of Administrative Order X-36. (*) This paragraph provided, in substance, that "every member of a trade or industry is hereby exempted from any obligation to contribute to the expenses of the administration of any code or codes other than the code for the trade or industry which embraces his principal line of business." The standard code provision authorizing the sale of labels provided that all of the products of the industry had to bear the label. Since, in many cases, the charge for labels included the cost of code administration, persons who had their minor line of business in industries requiring the use of labels found themselves in the paradoxical position of being required to pay something under an order of a code which was specifically exempted under an Administrative Order. The problem was

(*) Administrative Order X-36 (Washington) Government Printing Office.

much more complex than appears on the surface. If an alternative were granted the industry member of not purchasing labels in order to give to him the benefits created under Administrative Order X-36, the possibility of the sale of his products would be diminished since retailers would refuse to purchase unlabeled products. On the other hand, if labels were given to him without charge, he would be receiving a preference as against all other members of the same industry. This problem arose originally in the comfortable division of the light sewing industry except garments code. Many members of the comfortable division of this industry had their major line of business in one of the apparel industries and under the terms of Paragraph III of Administrative Order X-36 they should not be required to make any payment to support the administration of the minor line code.

Mr. D. M. Nelson, former Code Administration Director, wrote the following as his comment on this problem:

> "It is my understanding that X-36 does not apply to label industries . . . . if it does apply to label industries, I think it should be corrected immediately."

The issuance of Administrative Order X-36-2 on March 30, 1935 officially promulgated the above policy.

The second problem was that of coordination of the control over the financial activities of the code authorities obtaining funds by means of the sale of labels. The difficulty of obtaining the submission of fair and reasonably budgets by code authorities was a continuing source of trouble to effectuating NRA superivision of code activities. Repeatedly, code authorities submitted budgets which contained either excessive items of expenditure or items of expense which could not properly be construed within the purposes of the code. The submission of these unapprovable budgets made it necessary for the Administration to approve budgets in part in order not to deprive the code authority of its right to continue to sell labels which were reputed to be the compliance weapon.

A third difficutly arose as a result of the practice within the Administration of having each deputy administrator and his advisors within each of the several divisions approve rules and regulations pertaining to the issuance of labels and compliance activities, budgets and proposed charges for labels submitted by the code authorities of codes within their divisions. It is not surprising that, under this system, rules and regulations under different codes in the different division varied considerably and that compliance activites conducted under these rules were subject to even wider variance. This difficulty was in part corrected by the creation of a central agency - known as the Code Authorities Accounts Section - which was responsible for the review of budgets and bases of contribution but even under this central agency the prior approval given by deputy administrators within the several divisions tended to make impossible the creation of a uniform standard of regulations. A simple cure for this difficulty could have been effected by establishing one single agency having the sole and exclusive power to supervise and approve all rules and regulations, budgets and charges for the sales of labels submitted by code authorities without regard to the division to which the code was subject.

5. Effect of Label Costs on Consumer

In most instances the cost of code administration in label-using industries ranged from 1/10 to 3/10 of 1%, and usually those industries using labels were of the apparel trades, which industries have established price ranges for all products. For example - in the dress industry, the price ranges are $5.75, $6.75, $10.75, etc. In the millinery industry prices are $7.50 a dozen, $12.00 a dozen, $18.00 a dozen, $24.00 a dozen, $3.00 each, $4.00 each, etc. Bearing in mind that most of the industries using lables have these established price ranges, and that the manufacturer of a given product must add to his cost the sum equal to approximately 2/10 of 1%, it is evident that no increase in price would result from the label charges. Thus, the conclusion must be drawn that the cost of code administration - at least in those industries using labels - was not imposed upon the consumer.

CHAPTER V

CODE AUTHORITY ADMINISTRATION OF LABEL PROVISIONS

1. Method Used in Purchasing Labels

In the first instance code authorities after a very slight search, placed orders with those manufacturers of labels whom they believed to be the lowest bidders. No true test of what constituted the lowest bidder was possible, however, because there was no competitive bidding. At the time of the original placing of orders for labels most code authorities had not been able to determine in complete detail the different types of labels necessary, nor the amounts of each type of label. It was this factor which brought about such a high cost of labels. In February of 1934, officials of the Administration, recognizing that the hap-hazardous methods employed by code authorities in purchasing labels was exacting an unnecessary charge upon members of the industry, and also was subject to abuse by code authority members, formulated rules and regulations requiring code authorities to place all orders for labels after competitive bids. In accordance with administrative policy, code authorities then requested submission of bids from all known and recognized manufacturers of labels, and placed orders for periods generally of about six months. The tendency apparently had been to continue placing orders with the successful bidder, partly based upon the fact that cuts and prints having once been made by the successful bidder, he was in a better position to underbid all other manufacturers.

2. Storage of Labels

The large number of labels used by the code authorities and the use of various types and serial numbers, required a great amount of storage space. Likewise, the value of the labels, made it necessary to establish safe-guards against theft. Many of the smaller code authorities depended upon the manufactueer of labels to store all labels manufactured. In those cases, the label manufacturer, upon the direction of the code authority, would select the proper number and wrap and address the label package which then would be sent to the code authority to be checked, recorded and mailed. Most code authorities preferred to receive mail orders for labels and dispatch these orders within twenty-four hours after receiving them. Personal orders were not refused though, and it was felt that they tended to break up the regular label procedure and minimize the possibility of the proper checking and recording. In the case of the Millinery Code Authority, a preference for personal orders was evidenced. It was felt that through the receiving of personal orders it was possible to obtain closer contact with the member of the industry and bring more forceably to him an appreciation of code regulations. In no case were labels handed to any person calling at the code authority offices, but instead, employees of the code authority would bring the labels to the member of industry and receive a receipt from him on his premises.

3. Use of Compliance Certificates

All code authorities required signed statements of compliance* with

* See Appendix Q-Y in NRA Studies, Special exhibits, Work Materials No. 84 for example of types of compliance certificate used.

the very first label order. In fact, in many code authorities the order blank was in and of itself a compliance certificate. Thus with each order of labels a member of industry reaffirmed his agreement to remain in full and keep compliance with the code provisions. Aside from the statement of compliance, code authorities would keep a thorough and complete check of each applicant. In cases in which the code provisions required registration of contractors,* the checking of label applications required several days in order to ascertain whether or not the contractor as well as the manufacturer was in strict compliance. The most efficient type of procedure relating to checking in evidenced by those code authorities which issued labels immediately upon receipt of application, and checked for compliance after the order was filled, thus making it possible for the code authority to refuse to re-issue labels, if the applicant was found to have been in non-compliance.

With increased knowledge of its membership, a code authority, through one or more of its officials, could approve at a glance a label order as a result of personal knowledge as to the compliance or non-compliance of a given applicant. This procedure was being followed in a number of cases, resulting from a practice of requiring all label orders to be countersigned by one official on a code authority.

4. Inspections and Examinations of Plants

Inspections of members' plants were made to determine compliance with hour, wage, and trade practice provisions. Usually the same inspector investigated for compliance all types of provisions. However, in a few of the large code authorities, compliance groups were divided into fair practice inspectors, and wage and hour inspectors. The number of inspectors varied with each code authority. In a few instances, inspections were made once every two or three months, and in such codes as the millinery and coat and suit inspections averaged from one to three per day. In some cases, all the employers' books were examined, and the employees themselves were interrogated to ascertain the truth of the statements found in the books. Interrogations of employees generally were based upon question of classification. This type of investigation was chiefly important in those industries having codes containing classified crafts and varying wages for each craft. Many code authorities regarded their inspections as an educational nature, and intended only to instruct employers of the right and wrong in conducting their shop. In other cases, all alleged violations were reported to the code authority which notified the member that violations had been found, and informing his of the steps necessary to correct his non-compliance.

---

* See Appendix , AA in NRA Studies special exhibits, work Materials No. 84 for contractor registration forms.

CHAPTER VI

LEGALITY OF CODE LABELS

1. The Powers Conferred on the President by NIRA.

Section 10, Sub-section (a) of Title I of the Act stated that:

"The President is authroized to prescribe such rules and regulations as may be necessary to carry out the purposes of this Title andfees and licenses and for filing codes of fair competition and agreements and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500.00 or imprisonment for not to exceed six months, or both."

Moreover, had not the Act expressly given this power to the President, he would nevertheless have had the right to make such rules and regulations as were reasonably adapted to the enforcement of the said Act. The President is the Administrative Officer who is charged with the duty of carrying out the policy enunciated in Title I of the National Industrial Recovery Act; (15 U.S.C.A. 741) to the end that these purposes might be accomplished the President was vested with broad and comprehensive powers (U.S. v. Spotless Dollar Cleaners, 6 F. Supp. 725, 729.)

In Maryland Casualty Company v. United States (251 U.S. 342; 40 Sup. Ct. Rep. 155; 64 L. Ed. 297) the Court said - at page 349 -

"It is settled by many recent decisions of this court that a regulation by a department of government addressed to an reasonably adapted to the enforcement of an act of Congress or which is defined to such department has the force and effect of law if it be not in conflict with the express statutory provision."

The President has promulgated various rules and regulations creating and authorizing the use of the label as a means of effectuating the policies of the National Industrial Recovery Act. In no less than 50 industries he ordered the use of an NRA label. These constitute the only industries of those codified whose products admit of the use of such a label.

The President having adopted the label as a means of effecting the policies of the NIRA did so in compliance with the necessity of making his broad and comprehensive grant of power more specific. Having thus acted, the courts in accordance with their consistent previous opinions and decisions, must indulge in the presumption that his act was within the scope of his authority. In the cases of Gidley v. Palmerston, 7 Moore 111; Vanderheyden v. Young, 11 Johns 150; and Mott v. Mott, 12 Wheaton 31, it was held that "the acts of a public officer on public matters within his jurisdiction and where he had a discretion are to be presumed to be legal until shown by others to be unjustifiable."

The Constitution of the United States vests in the President certain important political powers in the exercise of which he is accountable only

to his country, his political character and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers who act by his authority and in conformity with his orders. Acts by such officers are his acts and whatever opinion may be entertained in the matter in which executive discretion may be used; still there exists and can exist no power to control that discretion.

See Marbury v. Madison, 1 Cranch 137; 2 L. ed. 60 p. 70.

Thus the President or his duly authorized officers had available the choice of manifold means of accomplishing the purposes of the National Industrial Recovery Act. In his discretion he chose the label. This choice being a discretionary act of the President (reasonably adapted to the enforcement of the act) is binding on the court and may neither be reviewed nor questioned. The use of the label as ordered by the President shows a regulation reasonably adopted to effectuate the policies of the National Industrial Recovery Act, because:

(a) The label provided an efficient device for checking on code compliance in industry in that it gave an infallible index of production.

(b) The label constituted notice to the world at large that a given product had been produced by a manufacturer who was in compliance with the code of fair competition for his industry.

(c) The label, inasmuch as it was withdrawn upon proof of violation of code provision served as a deterrent to such violation, thereby hoping to effectuate the purposes of the act.

(d) The use of a label as a means of accomplishing cooperative action has proven its value through many years of use.

(e) The courts in Pennsylvania, New York, Massachusetts, Connecticut, Indiana, have all recognized the effectiveness of the use of labels. See:

Comm. v. Norton (1901)
16 Pa. Sup. Ct. 423
9 Pa. Dist. 132

Perkins v. Heert
158 N. Y. 306
33, N. E. 18
70 Am. St. Rep. 483
43 L. R. A. 658

Tracy v. Banker
170 Mass. 266
49 N. E. 308
39 L. R. A. 308

(f) 44 states recognized the validity of the use of union labels and

preserved its effectiveness by appropriate legislation. (*)

The President, having been charged with the duty of enforcing the National Industrial Recovery Act, could prescribe a type of license which would permit him to effectively supervise, control and regulate compliance. The adoption of the label in codes fell within the class of license hereinabove mentioned. There are many instances in our system of jurisprudence in which administrative bodies have been given the power to regulate an occupation or a business without having been expressly given any licensing powers. The body vested with this general regulatory power has often employed a license as a means to effectively control the subject matter involved, despite the fact that there was no express grant of the right to employ the use of such a license. This right to license has been challenged not only in the federal but in the state courts and has been uniformly upheld.

In the case of in re Yan Yin (Laundry License Case, 22 Fed. 701) an act of the legislature of the state of Oregon incorporating the city of Portland, vested the City Council with the power and authority to control and regulate slaughter houses, wash houses and public laundries. "Pursuant to this statute the City Council passed an ordinance 'to license and regulate wash houses and public laundries'." A quarterly license fee of $5.00 was imposed. Yan Yin refusing to pay the said license fee was imprisoned in lieu of a fine for operating a laundry without a license, and sued out a writ of habeus corpus. The petition continued that:

"The power to regulate did not regulate the power to license."

The court said at page 702-703:

"The words 'to control' and 'to regulate' imply to restrain, to check, to rule and direct and in my judgment the power to do either of these implies the right to license, as a convenient and proper means to that end. A license is merely a permission to do what is unlawful at common law, or is made so by some statute or ordinance, including the one authorizing or requiring the license. But this means the persons or occupations to be regulated are located and identified, and brought within the observation of the municipal authorities, so that whatever regulations are made concerning them may be the more easily and certainly enforced, including the giving of security for their observance, before even the license is issued. The Authority of the National government, like that of a municipal corporation is limited to the powers expressly granted in the constitution and such implied powers as may be necessary and convenient to the due execution of the former. And yet under the power 'to regulate' commerce, Congress may and does provide for licensing the instrumentalities thereof, as vessels, pilots, (License T x Cases, 5 Wall.) (p. 703.)

In Chicago Packing and Provision Co. Vs. City of Chicago (88 Ill. 221) The highest appellate court of Illinois has recognized that the right to regulate carries with it the right to license. An Illinois statute gave the city of Chicago the power "to direct the location and regulate the management of packing houses." The city adopted an ordinance which among other things provided for the licensing of packing houses as well as a license fee of $100,00 per annum. The court in holding this ordinance to a valid

(*) See Monthly Labor Review, U.S. Department of Labor, April, 1933, pp. 832 - 834

one said:

> "The general assembly no doubt in granting this power to cities and villages deemed it wise to make it more applicable by not specifying means they should employ to accomplish the purpose. Have no doubt intended to make the power complete (page 225.)
>
> "Had the mode accomplishing the end been specifically prescribed in many of these bodies, it might have proved impracticable and in many purposes been defeated."

In Real Silk Hosiery Mills, Inc., v. City of Portland (297 Fed. 897) the validity of a city ordinance was before the court. This ordinance provided that all persons who solicited orders and received a payment on account in advance of the delivery of goods must procure a license. The ordinance further imposed a fee therefor. In addition to procuring this license, the solicitor was compelled to post a bond in the sum of $500.00 to insure delivery of the merchandise sold. The city had no authority to pass this licensing ordinance except that which could be inferred from its right to pass ordinance concerning health, morals and protection of its citizens. The plaintiff, a foreign corporation, employed solicitors in the city. The Circuit Court of Appeals held that under the reserve police powers of the city generally granted, the city had the right to pass the ordinance in question. The case was appealed to the United States Supreme Court which - 268 U. S. 325; 45 Sup. Ct. Rep. 535; 69 L. ed. 982, - reversed the decree of the Circuit Court of Appeals, holding that the ordinance was unconstitutional as to this plaintiff on the ground that as to it, the ordinance was a burden on interstate commerce.

It should be pointed out that great difference lies between the facts in the above case and one which would have arisen under the National Industrial Recovery Act, since the act is based on the commerce clause of the constitution, under which clause Congress has the complete and unqualified right to regulate interstate commerce (U. S. et al. v. Shissler et al., 7 Fed. Supp. 123.)

Such cases as Ruban v. city of Chicago, 161 N. E. 133; Prudential Realty Company, Inc., v. City of Youngstown, 160 N.E. 695; Baldwin v. State, 141 N.E. 343; City of Portland v. Western Union Telegraph Company et al., 146 Pacific 148; Plumas County v. Wheeler et al., 87 Pacific 909; Conley v. City of Buffalo, 119 N.Y.S. 87, make manifest the proposition that the President has the power and the right to prescribe a license to aid in regulating the industries of the United States to the end that an act may be enforced. His promulgation, setting up the label as a license, had the effect of law:

> "Such regulations being reasonable and appropriate for the enforcement of the provisions of the taxing act, are binding and have the effect of law."

U. S. v. Morehead, 243 U. S. 607.

The power to license as contained in Section 4, Sub-section (b) of the Act was a drastic measure, giving the President under certain specific conditions the right to license business enterprises. "This is a vigorous

emergency powers," (*) which was only intended to be used sparingly and then only when it was found that

> "Destructive wage and price cutting so demoralized an industry that it could not be rehabilitated by ordinary and usual means."

In Section 10 (a) of the Act:

> "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of the title."

This latter section empowered the President to promulgate such reasonable rules and regulations as were advisable for the effectuation of the purposes of the Act. As has previously been demonstrated, the power to regulate implies the power to create such a license which is reasonably necessary to enable the officer who is charged with the duty to carry out the Act, to perform such duty.

Distinction must be made between the powers conferred upon the President in Section 4(b) and 10(a) of the Act. Under 4(b) Congress recognizes that the exigencies of an unprecedented depression might require the exercise of a small unlimited, unusual, drastic and immediate power to force industry to rehabilitate itself. Under 10(a) of the Act, Congress contemplated that the President would make such rules and regulations which could be successfully employed and relied upon for the effectuation of the purposes of the Act. The power to license, which necessarily was coupled with powers conferred in Section 10(a), was confined to a limited scope, namely, the enforcement of rules and regulations adopted and prescribed in order to effectuate the purposes of national recovery.

It might be argued that the existence of licensing power in Section 4(b) of the Act would exclude the inference of any power to license under any other provison of the Act. This doctrine, commonly known as "expressio unius est exclusio alterius", has no application in the present situation.

As was said by Mr. Justice Sutherland writing for the Supreme Court of the United States:

> "And it is said that the effect of this is to confine the Governor-General's powers of appointment within the limits of this administration. The general rule that the expression of one thing is the exclusion of others is subject to exceptions. Like other canons of unstatutory construction it is only an aid in the ascertaining of the meaning of the law and must yield whenever a contrary intention on the part of the lawmakers is apparent. Where a statute contains a grant of power enumerating certain things which may be done and also a general grant of power which standing alone would include these things anemore, the general grant may be given full effect if the context shows that the enumeration was not intended to be exclusive.

(*) See report of House Committee on Ways and Means, No. 159, May 23, 1933.

"See for example,
Springer etal vs Government of Philippine Islands (277 U.S. 189)
Ford v. United States, 273 U.S. 593, 611, 71 L. ed. 793
801, 47 Sup. Ct. Rep. 531; Portland v. New England Teleph. & Teleg.
Co. 193, Mr. 340, 24, 68 Atl. 1040; Crubbe v. Crubbe, 26 Or. 363,
370. 38, Pac. 162; Swick v. Coleman, 218 Ill. Commercial Bank, 130
Mo. App. 687, 692, 108 S. 1095; McFarland v. Missouri K. & T.B. Co.,
84 Mo. App. 336, 342, 68 S. W. 105,"

There is further evidence from the language of the Act that Section 4 (b) was not intended to be exclusive. The temporary nature of the restriction of the provisions clearly indicates the soundness of this theory. The broader grant of power to regulate given the President in Section 10(a) of the Act should be given full effect because it is under that provision that the success in accomplishing the purposes given in Section 1 of the Act must depend.

The President had the right to make valid delegation of his right to issue labels to the respective code authorities.

"The President may delegate any of his functions and powers under this title to such officers, agents and employees as he may designate or appoint and may establish an industrial planning and research agency to aid in carrying out his functions under this title."

(NIRA, Section 2, Sub-section (b); 15 U.S.C.A., 702b.)

This delegation is not in contravention of that rule which prohibits a re-delegation by a member of the government to a private individual of those of his powers which require exercise of judgment and discretion.

The function of the code authorities as to the issuance of labels was purely ministerial in nature. This fact is evident from the language used in all label provisions.

"Any and all members of the industry may apply to the code authority for a permit to use such NRA label, which permit to use the label shall be granted to them but only if and so long as as they comply with the code."

Code authorities therefore were properly entrusted with the exercise of such a purely ministerial function.

2. Legality of the Charge for Labels.

Examination of the provisions of the National Industrial Recovery Act and the various committee reports and debates in Congress prior to its enactment all disclose that the scheme of our recovery administration is that industry should, through its own efforts, subject to the supervision of the government, lift itself out of the depression and free itself from the chaotic conditions which then existed. In other words, it was intended that industry by self-government under Federal supervision was to put its own house in order.

(See Title #1 - NIRA; Speech of Senator Wagner at the hearing before Senate Committee on Finance. May 22nd to June 1st, p.1.

(Bulletin; #1, Statement of the President, June 16, 1933.

(Address by Donald R. Richberg, July 5, 1933

(Report of House Committee on Ways and Means, #159, May 23, 1933.)

The duty imposed upon industry to govern itself carried with it the obligation of supporting the agency which was set up to accomplish that end. The agency which was the code authority in order to raise funds to administer codes had to look to industry for the necessary monies. In other words, the obligation of the industry to govern itself carried with it both the right of the code authority to distribute this burden among the members of the industry by some equitable sort of assessment and the obligation of those assessed to pay.

In making the assessments the President could have used any means which would have distributed the burden of supporting codes in an equitable manner and could have used any agency which in his discretion would best serve the purpose. The label was extremely well adapted to serve that purpose. But the manufacturer doing the biggest business, having the largest production and deriving the most benefit from the code paid as his share a greater amount of money than the manufacturer who did a smaller volume of business. Moreover the label was an efficient and effective means of collecting this assessment because through the purchase of labels manufacturers paid their assessments through small expenditures of money in a more or less painless fashion.

The label being a type of license, there was an inherent power in the proper administrative officer, the President, to charge a fee which was necessary and proper to cover the expense of issuing a label and inspecting and regulating the respective industry to determine the right to the use. Many of the cases heretofore cited held that the right to impose a license carries with it a correlative right to impose a fee which shall be for an amount necessary to cover the actual reasonable cost thereof including the distribution, administration and supervision of the use thereof.

Chicago Packing and Provision Company v. City of Chicago (88 Illinois 221). The highest court of Illinois held that the city of Chicago having the right to impose the license had the right to impose a license fee of a hundred dollars per annum. Other cases holding that the right to license carries with it the right to charge a fee for the license are:
Dugan Bros. of New Jersey v. Dunnery, 269 N.Y.S 645; City of Cincinnati v. Criterion Advertising Company, 168 N.E. 227 (Ohio); Kirby et al. v. City of Paragould, 251 S.W. 374 (Arkansas.)

It is apparent from the reading of the opinions in the above cases and many other cases in point that the President having determined upon a label which is similar in effect to a license for the purpose of supervising and regulating industries under codes, had the inherent

right to impose a reasonable charge or fee for such labels in an amount sufficient to cover the cost thereof, together with its distribution and administration.

It might be argued that the charging of a fee for the use of code labels placed a financial burden on the members of industry in such a manner as to constitute a taking of property without due process of law in contravention of the fifth amendment to the constitution. The contention is met, however, by numerous cases, many of which have been previously cited, such as the Laundry Case, Chicago Packing and Provision Company, etc. Indeed the courts have gone far beyond the point of sustaining the matter of charging a fee for the use of a license and in Union Bridge Company v. U. S. (204 U.S. 364) the court held that the Secretary of War could validly order the owners of a bridge to alter the same if the said bridge constituted an obstruction to interstate commerce. In altering the bridge the owner thereof was compelled to spend considerable money. This did not constitute the taking of property because the order to alter was within the power of the Secretary of War, the court in its opinion stating that:

> "The damage that will accrue to the bridge company as the result of compliance with the Secretary's order must in such case, be deemed incidental to the exercise by the government of its power to regulate commerce among the states."

3. The Right to Suspend the Issuance of Labels.

It is quite clear from the points heretofore set forth that the President had the right to issue and compel the use of labels and charge a reasonable fee therefor. It likewise follows that in issuing labels he may impose such conditions upon the use thereof as in his discretion he deems necessary and advises for the effectuation of the policies of the Act. Having the right to impose such conditions he may upon refusal to perform these conditions withhold the use of the labels. The continued privilege to be supplied with code labels depended upon the continued compliance with the provisions of the code. The forfeiture of the right to use the label is brought about by the failure or the neglect on the part of a manufacturer to observe "provisions." Thus the suspension of the right to use or the issuance of labels is merely the operation of a reasonable rule and regulation lawfully promulgated by the President to effectuate the purposes of the Act. The courts have uniformly upheld the right of an executive board to make such reasonable rules and regulations as are necessary to carry out the purposes of an act. If, incidentally the operation of these rules casts a burden upon those who are affected, they cannot be heard to complain and surely they cannot be heard to complain when the burden is only imposed on and after failure by the complaining person to carry out or observe reasonable rules and regulations established to govern his conduct. It has often been argued that the right to suspend the issuance on the use of labels constituted a boycott in restraint of trade in that it restricted the free flow of interstate commerce. This argument was met, however, very easily by the fact that in congress resides the power to regulate the flow of interstate commerce and therefore had the power to permit and provide for

a regulation such as was established through the use of code labels.

4. The Validity of the Label Provisions in the Retail Code.

The label provision in the retail code states that no retailer shall deal in merchandise manufactured under a code which requires such merchandise to bear an NRA label, unless such merchandise bears such label. The retail code provision can be considered as equivalent to a provision which simply states that retailers may deal only in the goods of complying concerns. It can be argued that a provision such as the above merely tends to protect against unfair competition on the part of retailers by dealing with non-complying concerns. Generally speaking, it can be presumed that goods of a non-complying concern are produced at a lower cost and if a retailer were permitted to deal in such goods, he would be enabled to under-sell other retailers buying from complying concerns whose cost has general been increased by virtue of code compliance. It is no answer to state that since all retailers may resort to the practice of buying from non-complying firms it is, therefore, not unfair competition for one retailer to buy from such firms. The Supreme Court held to the contrary in the Federal Trade Commission v. R. F. Keppel and Bros. Inc., 291 U. S. 304. (*)

(*) "The court below held, as the respondent argues here, that respondent's practice does not hinder competition or injure its competitors, since they are free to resort to the same sales method; that the practice does not tend to create a monopoly or involve any deception to consumers or the public, and hence is not an unfair method of competition within the meaning of the statute.....

"Although the method of competition adopted by respondent induces children, too young to be capable of exercising an intelligent judgment of the transaction, to purchase an article less desirable in point of quality or quantity than that offered at a comparable price in the straight good package, we may take it that it does not involve any fraud or deception. It would seem also that competing manufacturers can adopt the break and take device at any time and thus maintain their competitive position. From these premises respondent argues that the practice is beyond the reach of the Commission because it does not fall within any of the classes which this Court has held subject to the Commission's prohibition.....

(Continued)

From the viewpoint of the manufacturing firm, the retail code provision becomes in addition to a prohibition of unfair competition among retailers, a device for making effective the mandatory provisions of the manufacturers. It is a method of enforcing the license system of the manufacturing code, but since (as has heretofore been indicated) such a license system is valid, the provision designed to make it effective is likewise valid. A non-complying manufacturer who is not legally entitled to sell his goods because he is unable to obtain NRA code labels cannot argue that the fact he is unable to sell his goods is because no one will buy them. The obvious answer is that he is not legally entitled to sell them.

From the viewpoint of the retail code, the mandatory label provisions in the manufacturing codes are a device for making effective the provision of the retail code prohibiting retailers from engaging in unfair competition by dealing with non-complying concerns since it prohibits the marketing of such goods by the manufacturer.

The statutory authorization for a provision such as was contained in the retail code must be found in Section 10 (a) of the Act. The basis for such a finding centers itself about a question of whether or not the retail code provision tends to insure the effective administration of the Act and the code created under it.

The retail code provision considered by itself as a provision prohibiting retailers from dealing in the goods of non-complying manufacturers might find its statutory justification in Section 3 (a) in view of the argument it is a provision prohibiting unfair competition. If the provision can be rested on that statutory authorization, it would be sustained in the Act specifically providing for elimination of methods of unfair competition and the mere fact that coupled with elimination of unfair competition the provision incidentally assisted in securing compliance of the manufacturing codes.

5. The First Label Case

The first court action pertaining to the use of the label was that of the Chinigoy Company of Chicago v. the Millinery Code Authority. This

---

(*) (Continued)

> "The argument that a method used by one competitor is not unfair if others may adopt it without any restriction of competition between them was rejected by this Court in Federal Trade Commission v. Winstead Hosiery Co., supra: compare Federal Trade Commission v. Algoma Lumber Co., ante, p. 67. There it was specifically held that a trader may not, by pursuing a dishonest practice force his competitors to choose between its adoption of the loss of their trade. A method of competition which casts upon one's competitors the burden of the loss of business unless they will descent to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute was aimed."

case was brought in the Federal court of the southern New York District to restrain the millinery code Authority from issuing labels or to charge therefor. The basis of the suit was that there was no labeling provision in the National Industrial Recovery Act and that therefore the labeling provisions of the millinery code did not come within the terms of the statute. Judge Caffey in dismissing the plaintiff's application said:

> "These regulations were prescribed by the President. They are pursuant to statutory authority. They are within the principles prescribed by congress in laying down the rule for action by the President in erecting these code authorities.
>
> "It seems to me that a label would be worthless if every man might prescribe his own label. Whether that be true or not it is not unreasonable to include in the regulation a limitation upon anybody using the label except one who has been ascertained by the proper authorities through examination to have lived up to the regulations of the code."

This case was appealed and discontinued by the plaintiff pending the appeal.

An analysis of court decisions under the NRA up to March 9, 1935 (*) shows that the NRA had been successful in 60 out of 91 cases actually contested in the district courts.

(*) See Appendix E B NRA Studies Special Exhibits - Work Materials No. 84

CHAPTER VII

A COMPARISON OF THE UNION LABEL TO THE N. R. A. LABEL

Many types of label have, at one time or another, been used and, of the many purposes for which they have been designed, none was so useful as the Union label. The Union label is a distinctive development of American trade unionism. Its first appearance was apparently in California where it was utilized as part of an attempt to secure greater employment for white cigar makers who had suffered severely from the influx of Chinese workers.* This initial use of the label was evidently most satisfactory because not long after its original use, the demand for white cigar makers was substantially in excess of the supply.** Again, in 1879, the label was successfully used by cigar makers in St. Louis in furthering the purposes of a strike, and then in 1880 the Cigar Makers International Union of America formally adopted an official union label. The purpose of this label was to combat "inferior, ratshop, coolie, prison or filthy tenement house workmanship."

Between 1880 and 1890 the Hatters and Can Makers adopted union labels, the purpose of which was to assist those unions in meeting particular forms of competition to which they were subject. Outstanding among those form of competition were those arising from immigrant, tenement house and prison labor. Up to 1890 only a small group of unions had used the label and then only as an appeal to popular sympathy. After that date, unions began generally to adopt the label and practice was begun of appealing to trade unionists as such rather than to the general public.

When it is remembered that by 1908, 47 per cent of the total membership of the American Federation of Labor, which approximated 1,586,000 belonged to unions which had adopted some form of a label,*** the effectiveness of this particularized appeal can be appreciated. Union labels were of three general classifications - 1 - a label to mark a product; 2 - a shop card for display in a particular kind of business; 3 - a button for the employees' personal use. In addition to the general appeal created for the use of products bearing union labels, label leagues were organized in various states of the country to more widely spread the consumer appeal. One of the first of these was the Chicago Trade Union Label League, organized in 1885. In 1905 the Women's International Label League was formed and in 1909 the American Federation of Labor organized a union label department. The function of this department was to induce unions to place labels on their products and to persuade union members to purchase goods bearing a union label. By 1915, 39 national and international unions affiliated with the American Federation of Labor had adopted some form of label. Under the auspice of the several label leagues, label meetings were held at which wives and the heads of families were exhorted to purchase only labeled merchandise and these leagues were instrumental in many instances in establishing stores which sold nothing but goods bearing the union label.

---

* From the statement by Ernest Spedden "The Trade Union Label".

** From statement in U. S. Department of Labor, Monthly Labor Review April 1932, page 831.

*** Spedden - "The Trade Union Label," page 22.

At the 1925 convention of the American Federation of Labor it was decided that certain trades should be singled out in a campaign to popularize the label. These trades were the wall paper crafts, window glass making and headwear industries, the campaign to last 40 weeks and the country was divided into districts, 4 agents being assigned to each. Advance agents were sent to secure the cooperation of the State Federations of Labor, City central bodies, Chambers of Commerce, Kiwanis and Rotary Clubs, etc. Meetings were arranged at which illustrated lectures were given, explaining the purposes and benefits of the label. It is significant to note that one of the greatest difficulties experienced in the furtherance of the label union program was the apathy and, in many cases, the vigorous opposition of retail stores. Im comparing the similarity of the NRA label with the Union label, it will be found that much of the effectiveness that was experienced by the use of NRA labels was due to the cooperation of the retail stores through inclusion of their label provisions in the code for that trade.

The report of the Executive Council of the American Federation of Labor to the 54th Annual Convention, October 1, 1934, states:

> "The Union label has a high and honorable record. The importance of increasing its use and emphasizing its prestige is doubly significant now that the National Recovery Act has developed the Blue Eagle and the NRA label."

There are even certain physical resemblances as the following: In the January 1909 edition of the Union Labor Advocate a facsimile of the Journeymen Barbers' Union Shop card appears. There are two eagles which may be said to be the parents of the present Blue Eagle.

In a resolution adopted by the American Federation of Labor in 1933, (*) further evidence of a link between the union label and the symbolic device of the National Recovery Administration is found. The resolution reads as follows:

> "WHEREAS, the interest of the entire labor movement is centered at this time upon the National Recovery Act, its operation and administration; and
>
> "WHEREAS, the display of the N.R.A. insignia by an employer is a declaration of his covenant with the Government to observe all provisions of the Code regulating the operation of the industry in which he is engaged; and
>
> "WHEREAS, all codes for the retail trade provide that the employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion in the exercise of that right; and

(*) Proceedings of American Federation of Labor, 1933 - page 277.

"WHEREAS, there are millions of retail store employees, who are still unorganized and who have no voice in the regulation of their working conditions; and

"WHEREAS, the Union Store Card of the Retail Clerks' International Protective Association, offers concrete evidence to the public that union clerks only are employed in the place of business where displayed, and that said card has been issued upon the signing of a collective bargaining agreement; and

"WHEREAS, the presence of both the N.R.A. insignia and the Union Store Card is proof that the employer is complying with all the provisions of the retail code; therefore, be it

"RESOLVED, that the American Federation of Labor recommend that its membership patronize those retail establishments showing the Blue Eagle and also the Union Shop card displayed as a guarantee of fair wages and working conditions; and be it further

"RESOLVED....."*

The American Federation of Labor Report goes on to say:

"The Union Label Department has entered into the spirit of the N.R.A. and will do its part to interpret the meaning thereof to the toiling masses."

The American Federation of Labor seems to have been particularly aware of the extent to which the N.R.A. label is bound to the union label.

In 1908 the Boot and Shoe Workers Union advertised that shoes bearing their label were made by union labor and fair employers who had agreed to arbitrate all differences. Believers in industrial peace were urged to ask for shoes bearing the union stamp.

The Bush & Gerts Piano Company advertised:

"Every one of these celebrated pianos is manufactured by Union Labor and now bears the authorized stamp of that organization - the Union Label."

Several other firms in Chicago also advertised conspicuously that they sold union label goods. Union compiled directories of dealers selling union label goods. These directories became quite popular.

---

* For the full text of above resolution see "Proceedings of American Federation of Labor," 1933 - page 277.

Another statement indicating the cooperation between capital and labor is the following:

> "As union men we owe to these merchants or employers of labor who are fair to labor, all the assistance we can in advertising and in increasing their business. It is the duty of labor to 'boost our friends' rather than 'knock our enemies'";

A pamphlet of the Social Reform Club contained the statement that while the strike is an aspect of the union at war the label does away with the need for strike.

In another publication the label is proclaimed as the medium through which the public may enforce its rightful power of arbitrament between employer and employees. In an essay on the union label one writer* has said:

> "It makes the strike unnecessary by making compliance with union conditions an advantage in business.....It is a weapon that profits the employer equally with the employee, but only so long as both aim at the same object."

This writer goes on to say that it is a good medium of advertising for the employer since he can enlist the members of the union and their families and friends in his favor. The American Federationist states that mobilization of wage earners in the consumer field would make unnecessary many struggles in the production end.

Spedden also contends that the manufacturer of label goods is aided in selling his goods by the union. In an early issue of the Union Labor Advocate, we find the union label upheld as a means of accomplishing much for labor without the necessity for strike. It is the consumer to whom all label campaigns, be they American Federation of Labor, or National Recovery Administration, are addressed. Walter MacArthur saw the union label's uses to the public, and held that it directed and concentrated public sentiment against the evils peculiar to certain industries and against evils common to many industries, that it organized purchasing power along the lines of fair conditions of labor as against these conditions that destroy the health and morality of the producer.

As the Social Reform Club pointed out in a leaflet it used,** the consumer does not know under what conditions the goods that he purchases are made. Therefore, one function of the union label is to indicate

---

* Walter MacArthur - Union Label its History and Aims.

** Taken from "Union Label Leaflet No. 1." Published by A. F. of L.

that the work done was done under wholesome conditions, reasonable wages, and reasonable hours of work were granted and the contention is further made that the public is in sympathy with these objects. In another pamphlet put out by the same organization it is rightfully asserted that the union label can only be useful if the public shuns goods that do not carry a label.

From the above discussion one might perhaps gain the impression that the consumer was completely disinterested and had no stakes in the game. However, as some have taken pains to show the consumer is a very much interested party. As an early exhortation to consumers ran:

> "Demand the label's presence on honest-made goods of any and all classes. Hold it up and it will hold you up in return."*

It is interesting to note here that NRA advertisements in the subways bore a similar legend. It must also be recognized that the consumer is not some abstract entity but is often an industrial wage worker who has much to gain if union demands are granted. The various trade union journals which appeal to trade unionists, their families, and friends, are appealing to a vast group of consumers which has often demonstrated its effectiveness when it felt that a certain end was desirable.

It would appear that the National Recovery Administration in adopting a label as a means of achieving certain of the ends which are described in Section 1, Title 1 of the National Industrial Recovery Act, was merely developing further an American Institution which had its origin in a desire to accomplish similar purposes.

---

* See "Union Labor Advocate" January, 1908. Pub. by A. F. of L.

CHAPTER VIII

CONCLUSIONS

I. DESIRABILITY OF ONE INSIGNIA. - In a report by the Label Project Committee, the Committee* - after a complete study of the use of code labels, expressed as its opinion that

"There should be a single national label rather than many individual industry labels. Of course, the national label should bear the name of the individual industries using it."**

The use of one single emblem would make easier the task of government educational efforts to promote and maintain all the standards of fair competition whether those of special agreements or of codes. The use of a single emblem, likewise, would tend to avoid the confusion which would result from the use of various types of insignia to signify the same or similar purposes.

2. DESIRABILITY OF MORE GENERAL USE OF LABELS. All records of the administration clearly indicate that compliance and the raising of revenue was much more effective in those industries which used labels.*** It, therefore, follows that labels, if more generally used or if used by all industries, would make the administration of code enforcement and code financing a simpler task. The fact that industry is cooperating with Government or that members of industry are cooperating among themselves for the purpose of creating better standards of industry conduct would be a sufficient basis for such industry members having a general identifiable badge or label to display to the consuming public.

3. ADAPTABILITY OF LABEL TO GENERAL USE. During the period of code operation, many industries were informed by the administration that the products manufactured by them were not adaptable to the use of labels. However, the lack of adaptability resulted, not so much from the nature of the product as from the nature of the law under which the codes were formulated and the provisions contained in codes approved. With properly prepared codes of fair competition, the effectiveness of the code label in one form or another could be generally adaptable, thus in the case of the covered button industry -

---

* See "Report of NRA Label Project Committee - Volume A. NRA Archives.

** See Volume A, page 5, Recommendation No. 6. Ibid p. 5.

*** See Preliminary Report of House and Kershner, "Study of Labels as a Means of raising Revenue," - (Finance Unit) NRA Archives.

an industry which merely renders a service to the dress industry - the effectiveness of the use of labels could have been created had there been a provision in the dress code prohibiting members of that industry from engaging the services of members of the covered button industry, unless such covered button manufacturer was in full and complete compliance with the code provisions for this industry, as evidenced by an insignia similar to the label on his invoices or letter-heads. Indeed, the only reason that stamping or printing of label insignia on invoices was ineffective was because there was no provision in any code prohibiting persons from purchasing products made by manufacturers, where such insignia was not displayed.

4. DESIRABILITY OF LABEL DISTRIBUTION BY INDUSTRY OR BY GOVERNMENT -

The Label Project Committee was divided in its opinion on the question of whether or not labels should be distributed by the government or by code authorities. Mr. Oppenheim, the chairman of the Committee, was of the opinion that "labels should be sold at cost by the government to the associations of industries or to the administrative agencies established by industries." (*) Mr. Edwards and Miss Harron were of the opinion that (**) "government should issue labels directly to industry members if it is to handle labels at all; this system has the advantage of stressing the label as a government label and of keeping entirely within the hands of the government all matters relating to administration and regulation of the use of labels and will permit the government to assure itself that labels are being used only by members of industry who are in compliance with their agreements."

There is much that can be said for both plans. The first would tend to reduce label costs and likewise keep within the administration some degree of control, while the second would tend to give a more complete control to the administration and avoid the basis for many complaints registered under the former system, resulting from so-called code authority oppression. It would appear from all reports that some correction was necessary from conditions existing under the former method of label control by industries. The constant need for new and more stringent administrative regulation, as evidenced by the many administrative orders issued concerning the distribution and suspension of the use of labels, is some evidence of the fact that the methods used were not ideal. The combination of the two plans would appear to be a workable solution, that is, the government shall sell all labels to industry - at cost - permit industry to resell the labels to industry members at a reasonable price above cost in order to obtain the necessary funds for administrative purposes; that the government retain complete control and power over the suspension of the use of labels and also the power to determine whether or not members of industry are entitled to such use in the first instance.

(*) See "Report of Label Project Committee," Volume A - Page 5.

(**) See "Report of Label Project Committee" Volume A, Page 5.

BASES OF ASSESSMENT. - There were six different and distinctive bases for assessment employed by the code authorities administering codes containing label provisions. (*) Plans varied from one fixed charge for labels to many charges for various types and variously priced articles. Of all the plans employed by the code authorities, however, the most equitable appears to be the system of having one flat charge for labels with accounts adjusted periodically to percentage of sales. This plan took all the guess work out of the ratio of payment toward code expenses between industry members. It had a further advantage of making payment of code assessments easier for the industry member, in that, each day, week or month when labels were purchased, some part of the total cost of code administration was being paid for, thus avoiding the necessity of industry members making large lump sum payments which, often-times, were difficult to meet and occasioned many industry complaints. The value of the method could be increased by having varied charges for labels depending upon the price range of products to which they were to be affixed, with a periodical adjustment based upon percentage of sales, thus tending to make the charge for labels more nearly approximate the full assessment and thereby reducing the amounts of money to be paid by members of the industry at the end of each adjustment period.

(*) See Report of House and Kershner, "Study of Labels as a Means of Raising Revenue" Finance Unit Report.

EXBIBIT (A)
COPY OF CERTIFICATE OF ASSIGNMENT

UNITED STATES
DEPARTMENT OF COMMERCE
PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

This is to certify, That the annexed is a true copy from the Digest of this Office of all Assignments, Agreements, Licenses, Powers of Attorney, and other instruments of writing, found of record up to and including April 16, 1935

that may affect DESIGN LETTERS PATENT granted to

Charles Toucey Coiner, Mechanicsville, Pa., assignor to The Government of the United States, as represented by National Recovery Administration.

Design Patent No. 90,793½ dated September 26, 1933.

"A Placard or Similar Article".

Searched from September 21, 1933.

- - - - -

Instrument dated Sept. 21, 1933. (Acknowledged).
Recorded Sept. 22, 1933. Liber O-157 Page 230.

Charles Toucey Coiner,
to
The Government of the
United States as represented
by National Recovery
Administration.

Charles T. Coiner, Inventor.
Design for a Placard or
Similar Article.
Petition dated Sept. 20, 1933.
Des. 90.793½ Sept. 26, 1933.

Assigns entire right, title and interest, for the U. S., in said invention as described in the specification.

- - - - -

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-seventh day of April, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and fifty-ninth.

Attest: Charles A. Gray
Chief of Division.

Conway P. Coe
Thomas E. Robertson
Commissioner of Patents.

9859

EXBIBIT (B)

BLUE EAGLE REPRODUCTION REQUIREMENTS
April 23, 1934 - Insignia Section, NRA.

1. The new Blue Eagle for members of trade and industry operating under codes as well as the Blue Eagle for those operating under the President's Reemployment Agreement are Insignia of NRA protected by U.S. Design Patent No. 90793½, and may not be reproduced without prior written authorization from the National Recovery Administration.

2. Reproduction authorizations previously issued by the Insignia Section of NRA are extended to apply to Blue Eagles for trades and industries

3. The following requirements apply to all reproductions of Blue Eagles:

4. No delivery of any Blue Eagle reproduction may be made for use of another person without a prior written statement to the authorized reproducer from such other person that he is complying with the code for the trade or industry to which the reproduction relates or (in the case of the President's Reemployment Agreement Blue Eagle) that such other person is complying with the President's Reemployment Agreement as extended by Executive Order dated April 14, 1934.

5. Each reproduction in an advertisement or on stationery, goods, containers, wrappers, labels and the like (other than NRA labels specifically provided for in any Code) must be accompanied by the name of the person displaying the reproduction or by a brand name or trade mark owned by him and must be so placed by the reproducer as to indicate clearly that the display is by the person named or by the owner of the brand name or trade mark.

6. For the purpose of reproducing the Blue Eagle for any trade or industry, all the words and figures below the word "CODE" may be deleted but in no case may this deletion occur except in advertisements or on stationery, goods, containers, wrappers, and labels, including NRA labels specifically provided for in any Code.

7. No Blue Eagle reproduction shall bear the words "Property of the United States Government - Not for Sale". With this exception and the specific deletion authorized in paragraph 6 of these Requirements, no Blue Eagle reproduction may vary from the patented design, date, registration number, wording or color combination of the official Blue Eagle excepting that it may be reproduced in any one solid color employed in the other printing or material used therein.

8. No Blue Eagle shall be reproduced merely as a decoration.

9. The printer and publisher of any book or of any newspaper, magazine or other periodical published at regular intervals is authorized to reproduce the Blue Eagle in any article about NRA or in the advertisement of any person who has filed with such publication a written statement indicating compliance with NRA as described in paragraph 4 of these Requirements.

10. Any reproduction authorization issued may be withdrawn for cause.

11. Written authorization to reproduce the Blue Eagle will be issued by the Insignia Section, NRA, Washington, D.C., to any person certifying as follows:

(a) His compliance with the Code for his trade or industry and the registration number of his Blue Eagle for his trade or industry.

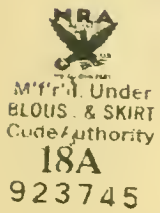
(b) His compliance with the President's Reemployment Agreement as extended by Executive Order of April 14, 1934 (if there is no approved Code applicable to him in making the reproduction).

(c) His agreement to abide by Regulations of the NRA and these Requirements. The application must be accompanied by a specimen of the intended reproduction.

12. These Requirements supersede "NRA Circular No. 1" issued July 23, 1933, and the "Interpretation of NRA Circular No. 1" dated September 27, 1933.

Page

COPIES OF CODE LABELS
(C)



FORM OF ORDER OF SUSPENION
(N)

NATIONAL RECOVERY ADMINISTRATION

WASHINGTON, D.C.
NEW YORK HEADQUARTERS
45 Broadway
New York, N. Y.

Gentlemen:

After consideration of findings of fact and evidence of violation embodied in the summary submitted to me by you on 1935, said findings of fact being based upon a hearing held by you pursuant to Administrative Order X-135, and after due consideration of the contentions of the respondent, I hereby direct you to suspend the issuance of labels to

for violation of Article . I further direct that you dispatch immediately to the respondent by registered mail a copy of the above summary of this case and a copy of this order.

You are also directed to mail to

(Appropriate Regional Compliance Director)

a complete record of this case, as prescribed by Paragraph 14 of Administrative Order No. X-135, on or before
and to notify both the respondent and myself that you have done so.

Dean G. Edwards,
NRA Label Agent.

DGE/P

FORM OF ORDER DENYING RIGHT TO SUSPEND
(0)

NATIONAL RECOVERY ADMINISTRATION

WASHINGTON, D.C.
NEW YORK HEADQUARTERS
45 Broadway
New York, N.Y.

Gentlemen:

After consideration of findings of fact and evidence of violation embodied in the summary submitted to me by you on 1935, said findings of fact being based upon a hearing held by you pursuant to Administrative Order No. X-135, and after due consideration of the contentions of the respondent, I hereby disapprove your recommendation for the suspension of issuance of labels to

You may appeal from my decision to

Mr. L. J. Martin, Chief,
Compliance Division, NRA,
Lenox Building,
Washington, D.C.

Dean G. Edwards,
NRA Label Agent.

DGE/P

FORM OF ORDER - RESUME ISSUANCE OF LABELS

NATIONAL RECOVERY ADMINISTRATION

WASHINGTON, D.C.
NEW YORK HEADQUARTERS
45 Broadway
New York, N.Y.

Gentlemen:

The violations of the provisions of your Code by the respondent having been adjusted, you are hereby directed to resume the issuance of labels to

upon application therefor and signing of Statement of Compliance.

You are also directed to inform this office, and the respondent, that this order has been complied with, and further to notify this office when labels are next issued.

Dean G. Edwards,
NRA Label Agent.

DGE/P

EXHIBIT C C

ADMINISTRATIVE ORDER

No. X-135. (CORRECTED COPY)

REGULATIONS COVERING THE USE OF LABELS UNDER CODES OF FAIR COMPETITION CONTAINING MANDATORY LABEL PROVISIONS.

The Division Administrator for the Textile Division having rendered a report dated January 29, 1935, in respect of this order and duly filed of record, which report contains findings that a revision of the rules and regulations for the administration of provisions in approved Codes of Fair Competition providing for the mandatory use of labels is necessary and will tend to effectuate the policies and purposes of Title I of the National Industrial Recovery Act,

NOW, THEREFORE, The National Industrial Recovery Board pursuant to the authority vested in it by Executive Order No. 6859, dated September 27, 1934, and Executive Order No. 6837, dated October 14, 1933, and otherwise, does hereby approve said report, adopt the findings contained therein and does find that the said rules and regulations as set forth in this Order will promote the policies and purposes of Title I of the National Industrial Recovery Act, and does hereby prescribe the following rules and regulations for the administration of provisions in approved Codes of Fair Competition which provide for the mandatory use of labels:

1. On and after the effective date of this order, Administrative Order No. X-38 shall cease to be in effect except that: (a) it shall govern any cases where a Code Authority has suspended the issue of labels pursuant to its provisions prior to the effective date of this Order; (b) the rights and obligations of any member of industry in respect to labels which have heretofore been issued shall not be in any way affected, provided, that all the terms of Administrative Order No. X-38 have been or are complied with; and (c) any penalty or liability under or arising out of Administrative Order No. X-38 shall not be extinguished.

2. Subject to the provisions of this Order and such other rules and regulations as may be promulgated by NRA the power to issue and administer the use of labels whose use is mandatory is delegated to the respective Code Authorities for the industries concerned.

3. Each such Code Authority shall, within thirty days after the effective date of this Order, submit to the National Recovery Administration, such rules and regulations for the sale issue and administration of the use of the label as may be necessary to carry out the provisions of this Order. Such rules and regulations shall not be in conflict with this Order and with paragraphs 1 and 2 of Administrative Order No. X-36, and shall be subject to any amendatory of supplementary Order issued by NRA. Such rules and regulations and any rules and regulations which may be submitted by way of amendment or addition thereto shall be deemed approved and shall become effective fourteen (14) days after they have been submitted unless disapproved or amended by the National Recovery Administration within such period. The National Recovery Administration, after giving interested parties such notice and opportunity to

further represents that he will use labels issued to him only on articles which are manufactured and sold in compliance with the provisions of the Code and of the Act and with the rules and regulations duly adopted pursuant thereto and only as long as he continues to comply with said provisions, rules and regulations."

9. No person shall, for the purpose of obtaining labels issued by any Code Authority of any industry falsely represent to such Code Authority that he is in compliance with the Code for such industry or with the National Industrial Recovery Act or with the rules or regulations duly adopted pursuant to such Code or Act.

10. When an applicant shall have signed such a statement, the Code Authority shall, within three (3) business days after the receipt of the application and statement, issue the required labels to the applicant except as hereinafter provided.

11. Upon application for the initial issue of labels, the NRA Label Agency designated by the Compliance and Enforcement Director of the NRA, may upon a showing by the Code Authority of reasonable cause, extend such three day period to permit such Code Authority to determine the truth of the statements contained in such application and statement. If, after investigation, the Code Authority has reason to believe that there have been violations of the provisions of the Code, or of the Act, or of any rule or regulation duly adopted pursuant thereto by reason of which the applicant should be denied the issue of labels, such Code Authority may, after following the procedure hereinafter provided for the suspension of the issue of labels, recommend to the NRA Label Agency that the initial issue of labels to such applicant be denied. The filing of such recommendation shall automatically extend the time for the initial issue of labels until the determination of such recommendation by such agency. The NRA Label Agency shall have the power to approve or disapprove such recommendation in accordance with the procedure hereinafter provided for the suspension of labels.

12. Whenever a Code Authority shall have reason to believe that anyone subject to its Code has violated any provision thereof or any rule or regulation duly adopted pursuant thereto or pursuant to the National Industrial Recovery Act, it may recommend to the NRA Label Agency, after a hearing conducted in accordance with the following procedure, that the issue of labels be suspended.

(a) Notice of hearing shall be dispatched to respondent by registered mail at least three (3) business days prior to the date of the hearing when the hearing is held at a place not more than ten (10) hours railroad traveling distance from the town where the violation is alleged to have occurred, and at least ten (10) days prior to the date of the hearing in all other cases. Written waiver by the respondent of such notice shall constitute sufficient compliance with this provision. The notice shall indicate the nature and the principal elements of the violation of the code provisions with which the respondent is charged. It shall further state that as a result of the hearing, the Code Authority may recommend the suspension of the issue of

labels to the respondent. The notice shall be accompanied by a copy of this Order.

(b) The hearing may be held by the Code Authority or by any agency authorized by it. Complainants or persons who have participated in the investigation which preceded the hearing shall not act as members of the tribunal before which the hearing is conducted, nor shall any member of such tribunal participate in the presentation of the complaint or testify at the hearing. The presiding officer of such tribunal shall not be a member of the industry.

13. If, after such hearing, the Code Authority or its agent for this purpose believes that there is sufficient evidence of violation to justify such action, the Code Authority or its agent may recommend to the NRA Label Agency that the issue of labels to such member of industry be suspended. Such recommendations shall be accompanied by findings of fact and by prima facie evidence of the violation embodied in a summary including the essential facts of the case and the contentions of the respondent. Upon receipt and consideration of such summary and such other material as it may deem necessary, the NRA Label Agency may direct the Code Authority to suspend the issue of labels pending further action as hereinafter provided. In the event that such NRA Label Agency directs the suspension of the issue of labels, the Code Authority shall immediately dispatch to respondent by registered mail a copy of the summary and of the order of the NRA Label Agency. If the NRA Label Agency disapproves the recommendation of the Code Authority of fails to act within five (5) days, the Code Authority may appeal to the Compliance and Enforcement Director.

14. If the NRA Label Agency approves such recommendation the Code Authority shall, within five (5) business days of such approval mail a complete record of the case including the notice of hearing (or waiver of such notice), the record of the hearing and all pertinent correspondence between the Code Authority and respondent with reference to the alleged violation to the Compliance and Enforcement Director and shall simultaneously notify the NRA Label Agency and the respondent that it has done so. The respondent shall have the right to appeal to the Compliance and Enforcement Director from an adverse decision of the NRA Label Agency and shall be given a hearing if he so requests. In the event that the respondent does not exercise such right of appeal the Compliance and Enforcement Director shall, upon the record, or after further hearing of which the Code Authority and the respondent involved shall have notice and opportunity to be heard, approve, disapprove or modify the action of the NRA Label Agency and withdraw the right to use labels or take such other action as he may deem necessary. The respondent may at all times prior to the final determination of the matter by the Compliance and Enforcement Director apply to said Compliance and Enforcement Director for an order directing the Code Authority to issue labels in such quantities as may be proper pending such final determination. Nothing herein contained shall limit the power of the Compliance and Enforcement Director after a hearing and finding of violation to deny the initial issue of labels, to suspend the issue of labels or to withdraw the right to use labels in any case in which the Code Authority and the NRA Label Agency or either of them have failed to Act. The Compliance and Enforcement Director is directed and authorized to order the initial issue of labels or the resumption of the issue of labels or to restore the right to use labels if he shall determine such action to be in the interests of compliance with a code.

15. No Code Authority shall take the final action of denying the initial issue of labels, or of suspending the issue of labels, or of withdrawing the right to use labels, or of resuming the issue of labels or of restoring the right to use labels unless the Compliance and Enforcement Director or the NRA Label Agency shall prior to the taking of such action issue an order approving and directing such action. If the respondent shall have satisfied the Compliance and Enforcement Director that he is in full compliance with the Code and the National Industrial Recovery Act and any rule and regulation duly adopted pursuant to said act, the Compliance and Enforcement Director shall forthwith issue and order directing the Code Authority to resume the issue of labels to the respondent and restore to the respondent the right to use such labels. The Code Authority shall comply with orders of the NRA Label Agency or of the Compliance and Enforcement Director. The Code Authority shall not give or authorize any publicity in case of alleged violation until adjustment has been effected or until the NRA Label Agency has directed the suspension or denial of the issue of labels and shall, in any event, withhold publicity if so ordered by the NRA Label Agency or the Compliance and Enforcement Director.

16. Neither the Code Authority nor any officer nor any employee thereof shall impose, demand or accept any fine or make the payment of a fine a condition precedent to not recommending the denial or suspension of the issue of labels, nor shall it or they demand or accept the payment of the costs of investigation without the express approval of the NRA Label Agency.

17. No charge for labels shall take effect until approved by NRA, and such charge shall be subject to the supervision, modification and disapproval of the National Recovery Administration. There shall be no difference in the charge for labels to be placed upon the same or similar articles to different members of the same industry without the approval of the NRA.

18. (a) No Code Authority shall spend funds derived from the sale of labels except under the provisions of a budget submitted to and duly approved by NRA, in compliance with the provisions of its Code, paragraphs 1 and 2 of Administrative Order No. X-36, and any order amendatory or supplementary thereto. Such funds may be expended by the Code Authority only during the period covered by such approved budget except as NRA may otherwise authorize.

(b) Code Authorities operating under the provisions of an approved budget shall submit a budget covering the period immediately subsequent, not later than forty-five (45) days prior to the expiration of the period covered by the approved budget.

19. In no case shall the funds derived from the sale of labels be used to make contributions to trade association expenses or to the expenses of other organizations, except that such funds may be used to defray the expenses of a regularly constituted Code Authority or of such agencies of such Code Authority as it may deem advisable to employ in administering its Code to the extent permitted by its budget and its Code.

20. The Code Authority shall make such reports concerning the sale, charges, issuance, distribution, suspension, withdrawal, investigation

and admisistration of the use of labels bearing the NRA insignia as the NRA may from time to time require.

21. The Compliance and Enforcement Director may delegate any powers conferred upon him by this Order.

22. Any person violating sections 5, 6, 7, or 9 of these regulations or using labels after the right to use such labels has been withdrawn is subject to the penalties provided in section 10(a) of the National Industrial Recovery Act.

23. This Order shall become effective five days from the date of its approval, except that paragraphs 17 and 18 shall become effective thirty (30) days after said effective date.

National Industrial Recovery Board,

W. A. Harriman
Administrative Officer

Order Recommended:

Prentiss L. Coonley,
Division Administrator.

Washington, D. C.
February 25, 1935.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Revie w.

The study sections set up in t he Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, misce llaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Ecnomic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparision with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power — Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768—4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

9768—6.